

ARTICLE 11

ELEVENTH ARTICLE

Submitted by: Paul Saner, on behalf of the Newbury Zoning Committee

To see if the Town will authorize the Select Board to enter into any necessary agreement(s) and/or amendments to existing agreements or other action(s) required to carry out the terms and conditions set forth in that certain Memorandum of Agreement and related Tax Certainty Agreement, between the Town of Brookline (hereinafter referred to as the “Town”) and Welltower Inc., and Welltower TRS Holdco LLC, their successors and assigns (hereinafter collectively referred to as “Welltower”). Welltower owns the parcels of land formerly occupied by Newbury College and commonly referred to as 117 Fisher Avenue and 124 Holland Avenue (said properties being sometimes referred to herein as the “East Parcel”); 110 Fisher Avenue, 150 Fisher Avenue, 146 Hyslop Road (a/k/a 129 Fisher Avenue) and 124 Fisher Avenue (said properties being collectively referred to as the “West Parcel”); and (ii) 125 Holland Road (“125 Holland”). Welltower intends to construct a senior living community on the East Parcel including 160 units, of which 80 will be independent living, 40 will be assisted living and 40 will be memory care (hereinafter referred to as the “Project”); as further described below, said Memorandum of Agreement to include the following terms at a minimum:

- 1) Offering the West Parcel for sale to the Town for \$14.8 million;
- 2) Providing two separate means for meeting the inclusionary zoning requirements imposed by the planned overlay district on the Project: (i) transferring the 125 Holland Road parcel to a qualified developer along with \$3.123 million in cash to allow for the construction of 18 affordable condominium units; or (ii) making a \$6.525 million payment in the Town’s Affordable Housing Trust Fund;
- 3) Requiring Welltower to not object to certain conditions of the Special Permits related to the Project, including:
 - a) Sustainability commitments, including a commitment not to use natural gas or fuel oil except for the commercial kitchen, emergency generator, domestic hot water, and indoor swimming pool, and to construct the Project in a manner so as to be LEED-NCv4 Gold Certifiable;
 - b) Partnership with the Council on Aging or Brookline CAN on programming and events as well as a commitment to a yearly contribution to the Senior Center;
 - c) Additional commitments to sustainable design elements;
 - d) Historic documentation of the East Parcel buildings;
 - e) The provision of a Public Easement Area along Fisher Avenue and a commitment to maintain the existing trees within said Public Easement Area;
 - h) Maintenance and adaptive re-use of the Mitton House on the East Parcel into the Project;

- i) Relocation of a Fisher Avenue crosswalk.
- j) Job fairs and internship opportunities targeted to Brookline residents
- 4) Providing a 95-year Tax Certainty Agreement on the East Parcel which shall be a restrictive covenant;
- 5) Requiring that the agreement(s) be recorded in the chain of title; and upon any further terms and conditions that the Board deems in the best interest of the Town with respect to the proposed development of the said Site; and
- 6) Other terms and conditions that the Select Board deems in the best interest of the Town.

The legal descriptions of the parcels for the Site are as follows:

EAST PARCEL

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence

NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence

SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence

SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline,

Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY	by Holland Road by two measurements, 260.70 feet and 102.00 feet;
EASTERLY	by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;
SOUTHERLY	by Tract II herein, 298.18 feet;
WESTERLY	by Fisher Avenue, 323.75 feet;
NORTHWESTERLY	by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

WEST PARCEL

PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY	on Fisher Avenue, one hundred and fifty (150) feet;
NORTHERLY	on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;
WESTERLY	on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and
SOUTHERLY	on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY	on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;
NORTHERLY	by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;
EASTERLY	by a line, one hundred and eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	by a line, forty-eight and 30/100 (48.30) feet; and
SOUTHWESTERLY	on land now or formerly of Judith Sprague, one hundred eighty-two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The

Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351

125 HOLLAND

The premises at 125 Holland Road, Brookline, Massachusetts bounded and described as follows:

BEGINNING at a stone bound on the easterly side of Fisher Avenue about 15 feet northwesterly of Holland Road; thence running

NORTHWESTERLY on said Fisher Avenue 127.50 feet; thence turning at a right angle
and running

EASTERLY	by land now or late of Curtis and land now or late of Nash on two courses 215.82 feet and 53.10 feet; thence turning and running
SOUTHERLY	by land now, or late of Curtis 157.08 feet to Holland Road; thence turning and running
WESTERLY	on said Holland Road 224.12 feet to a stone bound, thence turning and running
NORTHERLY	on the street line 23.33 feet of beginning.

Containing 37,930 square feet of land, more or less, and being shown on plans by Ernest W. Bowditch, Engineer, recorded with said Registry in Book 807, Page 458; Book 1007, Page 553; and Book 1081, Page 378.

OR ACT ON ANYTHING RELATIVE THERETO.

PETITIONER'S ARTICLE DESCRIPTION

This Article, if approved, will authorize the Select Board to enter into and/or amend as necessary any new or existing agreements so that the Town receives the full benefits and protections as set forth in the Memorandum of Agreement pertaining to the proposed development of the former Newbury College Campus.

The Memorandum of Agreement and draft exhibits follows – although please note some exhibits may be placeholders.

This warrant article is one of seven warrant articles related to Welltower's proposed development on the former Newbury College campus. For more information on how this warrant article fits into the larger package, please review the explanation for the warrant article titled "Fisher Hill Special Overlay District Zoning" proposing a rezoning of the east side of the former Newbury College campus.

MEMORANDUM OF AGREEMENT – March 5, 2020 version

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE TOWN OF BROOKLINE AND WELLTOWER INC. AND WELLTOWER TRS
HOLDCO LLC

This Memorandum of Agreement (this “Agreement”) between WELLTOWER INC., a Delaware corporation and WELLTOWER TRS HOLDCO LLC, a Delaware limited liability company, each having an office at 4500 Dorr Street, Toledo, Ohio 43615 (together with their successors and assigns hereinafter collectively referred to as “Developer”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), (Developer and the Town being collectively referred to as the “Parties”) is made and entered into this ____ day of _____, 2020, upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

WHEREAS, by Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the “Registry”) in Book 37136, Page 283, Welltower Inc. acquired property in Brookline, Massachusetts commonly known as 117 Fisher Avenue and 124 Holland Avenue (said properties being sometimes referred to herein as the “East Parcel”, a legal description of which is attached hereto as Exhibit A-1);

WHEREAS, by Quitclaim Deed dated September 5, 2019 recorded with the Registry in Book 37136, Page 286, Welltower TRS Holdco LLC acquired property commonly known as (i) 110 Fisher Avenue, 150 Fisher Avenue, 146 Hyslop Road (a/k/a 129 Fisher Avenue) and 124 Fisher Avenue (said properties being collectively referred to as the “West Parcel”, a legal description of which is attached hereto as Exhibit A-2), and (ii) 125 Holland Road (“125 Holland”), a legal description of which is attached hereto as Exhibit A-3;

WHEREAS, Developer seeks to construct a senior living facility consisting of 160 units of independent living, assisted living and memory care units and related facilities and parking spaces for a total of 98 vehicles (hereinafter collectively referred to as the “Project”, which term does not include the 125 Holland Project as such term is defined below), and a summary of the proposed Project and associated concept site plan, and concept building massing are attached hereto as Exhibit B;

WHEREAS, the proposed location for the Project is the East Parcel all as more particularly described in the legal description contained in Exhibit A-1 (collectively referred to as the “Property” or the “Site” unless otherwise indicated);

WHEREAS, the Parties have elected to develop multiple options for the Project to address the requirements it engenders related to affordable housing, and intend to memorialize the parameters by which the Developer will either: (1) provide eighteen (18) affordable

condominium units at 125 Holland; or (2) provide a cash payment of Six Million Five Hundred Twenty Five Thousand Dollars (\$6,525,000) made payable to the Brookline Affordable Housing Trust Fund;

WHEREAS, the Parties agree that the Project will benefit the Town in many ways including, but not limited to: (1) the opportunity for the Town to acquire the West Parcel at an agreed-upon price or, if the Town elects not to acquire the West Parcel, share in certain proceeds of the sale of the West Parcel, as set forth below; (2) substantial fiscal benefits associated with the redevelopment of the East Parcel for a taxable use; (3) a 95-year Tax Certainty Agreement for the East Parcel (the "Tax Certainty Agreement"); (4) improvements to the public realm including a public area easement along the Fisher Avenue frontage of the East Parcel which will include the obligation of Developer to maintain the existing trees in the easement area (the "Public Area Easement"), (5) commitment to sustainable development in general conformance to the standards embodied in the Town's "Prohibition on New Fossil Fuel Infrastructure in Major Construction"; (6) providing access in the Project for neighborhood meetings and for events held by the Town's Council on Aging; and (7) maintenance for adaptive reuse of the Mitton House and addition on the East Parcel, subject to the terms hereof;

WHEREAS, the Newbury College Zoning Study Committee ("the Committee") intends to submit a zoning by-law amendment (the "Proposed Zoning Amendment") for consideration at the Town Meeting commencing in May, 2020 that, if approved, would allow the Project to proceed through a special permit process informed by design guidelines developed specifically for the Project;

WHEREAS, the provisions of this Agreement are available for consideration by the Planning Board and the Board of Appeals in reviewing any application for a special permit(s) for the Project;

WHEREAS, the Parties wish to enter into this Agreement to memorialize their mutual understandings and obligations with respect to (1) the Project and certain permits and approvals required for the Project, as well as any other agreements between the Developer and the Town pertaining to the Project, including a 95-year Tax Certainty Agreement and the Public Area Easement, (2) the manner in which the Developer will comply with the requirements of Section 4.08 of the Town's Zoning Bylaw with respect to affordable housing requirements; (3) agreements of the Parties with respect to the disposition of the West Parcel; and (4) other matters set forth herein, all on the terms and conditions hereinafter set forth;

WHEREAS, the Parties contemplate entering into such further binding agreements as reasonably appropriate and approved by both Parties to proceed with the Project and to satisfy the mutual obligations contained herein;

NOW THEREFORE, in consideration of the promises and mutual obligations of the Parties hereto and upon good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, each of them does hereby covenant and agree as follows:

1. CERTAIN DEFINITIONS. All references herein to the following terms shall have the meanings hereinafter set forth:

- a. All references to the “Proposed Project Zoning Amendment” shall be construed as a reference to the text of a Warrant Article prepared for the Town Meeting commencing May 19, 2020, a copy of which is attached hereto as Exhibit C, as such text may be amended at Town Meeting, provided that such amendments do not impose burdens on the Project that are materially adverse to the financial feasibility of the Project in the reasonable judgement of Developer (which may include construction or operation costs). If Developer determines in its reasonable judgment that any such amendment/s to the text of the Proposed Project Zoning Amendment (Exhibit C) do impose burdens on the Project that are materially adverse to the financial feasibility of the Project, Developer shall use all commercially reasonable efforts to notify the Town as soon as possible prior to any vote to amend the Proposed Project Zoning Amendment. If the Proposed Project Zoning Amendment is nonetheless passed in a form amended in a materially adverse manner, and as a result thereof Developer decides in its sole discretion not to proceed with the Project or if Developer determines in its reasonable judgment that the amendment/s prohibits Developer from proceeding with Project as proposed then, in either case, Developer shall so notify the Town in writing within seven (7) business days after the date Town Meeting votes these articles, and in such case this Agreement shall immediately become null and void and of no force and effect.
- b. All references to the “Town Meeting Approval Conditions” shall be construed as references to: (i) approval by the 2020 Annual Town Meeting and the Attorney General of the Proposed Project Zoning Amendment; (ii) authorization by Town Meeting of the acceptance of the 95-year Tax Certainty Agreement attached hereto as Exhibit D; (iii) authorization by Town Meeting for the Select Board to execute this Agreement and any other documents or agreements necessary or appropriate for implementation of the proposed Project; and in each case with challenge periods to all such Town Meeting actions having passed (which, in the case of the Proposed Zoning Amendment, shall be the challenge period under G.L. c. 40, Secs. 32 and 32A) with no challenges by unrelated third parties pending or, if any of such actions is/are challenged, the same having been finally disposed of in a manner favorable to the Town Meeting action, not later than December 31, 2020. Notwithstanding anything herein to the contrary, if the Town Meeting Approval Conditions have not been satisfied by such date, then the Developer shall have the right, at any point prior to the issuance of the Special Permit contemplated by the Proposed Project Zoning Amendment, to abandon its permit application and relinquish its right to pursue the Project. Exercise of said right by the Developer will terminate this Agreement without the need for any further action on the part of either Developer or the Town, and without further recourse to the parties hereto.
- c. All references to the “Special Permit and Other Required Approvals” shall be construed as references to such other special permits, variances, licenses and/or other approvals, including but not limited to the expiration of any demolition delay under the Town’s Demolition Delay By-Law or lift(s) of stay as to such delay, any additional special permits under the existing Zoning By-Law and Proposed Project Zoning Amendment, including building permits and certificates of occupancy, which are necessary, in Developer’s and Town’s reasonable determination, to allow for the construction and operation of the Project such that the Project, with all the appeal periods having passed,

with no appeals pending or, if any such permit or approval is appealed, the same having been finally disposed of favorably to Developer not later than two (2) years from the date of issuance of the permit or approval which is the subject of the appeal.

2. AFFORDABLE HOUSING.

- a. 125 Holland Option. In addition to the Town Meeting Approval Conditions, the Committee shall submit a warrant article for consideration at the 2020 Annual Town Meeting (the “Proposed 125 Holland Warrant Article”, a copy of which is attached hereto as Exhibit E) pursuant to which 125 Holland shall be included in an overlay district to allow for the construction thereon of a condominium project containing eighteen (18) units of affordable housing (the “125 Holland Project”). In the event that the 125 Holland Warrant Article fails to achieve the 2/3 Town Meeting vote necessary for approval, the “Cash Option”, as described further below, shall automatically take effect.

A conceptual site plan of the development of 125 Holland Project proposed by the Proposed 125 Holland Warrant Article is attached as Exhibit F. The conceptual site plan is subject to change as 125 Holland Developer advances the 125 Holland Project.

The Town understands and agrees that the Developer does not intend, nor shall it be required to construct the 125 Holland Project. Accordingly, the Developer shall have the right to enter into such contractual arrangements with a third party, which the Developer has determined to have the requisite experience and financial wherewithal to construct the 125 Holland Project (the “125 Holland Developer”). The Developer shall include within the arrangements it enters into with the 125 Holland Developer a provision stating that any recourse by the 125 Holland Developer to the Zoning Board of Appeals for modification of the affordability requirements pursuant to Section 5.06.4.m.4 (or equivalent section), if such recourse would require raising the applicable Median Income levels, shall be conditioned upon prior recourse to funds available to the 125 Holland Developer by means of all budgeted contingencies (but in no event including the Developer Backstop, as such term is hereinafter defined). The Developer shall send to the Town copies of all contractual arrangements reached with the 125 Holland Road Developer prior to their execution. Pursuant to said contractual arrangements:

- (i) As soon as is reasonably feasible following the later of (i) issuance of a building permit for the Project, and (ii) the 125 Holland Developer’s obtaining a construction loan for the 125 Holland Project (which construction loan is expected to contain or require customary net worth and liquidity covenants of the 125 Holland Developer and its guarantors), the Developer shall cause 125 Holland to be conveyed for nominal consideration to the 125 Holland Developer, subject to an Affordability Deed Restriction (in a form substantially similar to the one attached at Exhibit G) whose terms specify that it will survive any further transfer including foreclosure; and

- (ii) the Developer shall contemporaneously contribute cash in the amount of Three Million One Hundred Twenty Three Thousand Dollars (\$3,123,000) to the 125 Holland Project, to be deposited in a construction disbursement account and made available on a requisition basis to the 125 Holland Developer during the course of construction on customary terms and conditions; and
- (iii) except for the Developer Backstop (as hereinafter defined), the 125 Holland Developer shall be solely responsible for all costs associated with the 125 Holland Project, including, without limitation, the design, financing, construction, completion and marketing of the same. The Developer agrees to reasonably cooperate in the 125 Holland Developer's attempt to secure all permits and approvals necessary to proceed with the 125 Holland Project, including by executing applications for the same (or authorizing the 125 Holland Developer to do so), but such cooperation shall be at no additional cost or obligation to Developer. Following the conveyance of 125 Holland to the 125 Holland Developer, the 125 Holland Developer shall be responsible for obtaining all necessary approvals and permitting and the Developer agrees not to appeal or otherwise contest any issuance of any permit necessary to complete or bring online the 125 Holland Project.

It is expressly understood and agreed by the Town that under no circumstance shall the issuance of the Special Permit and Other Required Approvals for the Project (including, without limitation, any building permit or certificate of occupancy) be conditioned on the commencement or completion of the 125 Holland Project.

If the 125 Holland Developer is unable to close on a construction loan for the 125 Holland Project by December 31, 2021, the obligations of the Developer hereunder will automatically revert to making the cash payment described in the Cash Option below without the need for any further agreement or documentation.

Upon closing of the construction loan for the 125 Holland Project, Welltower Inc., will also provide a financial guaranty of up to \$650,000 (the "Developer Backstop") for the benefit of the Town to help ensure completion of the 125 Holland Project should the funds available for completion be deemed insufficient by the construction lender after recourse to the available sources of funding from the 125 Holland Developer and its guarantor(s). Evidence that the construction lender has deemed the funds insufficient shall include: (1) notification by the construction lender to the Developer or the Town that the construction lender has reached such a conclusion; (2) publication of a foreclosure sale of 125 Holland; (3) classification by the lender of the loan as 100 percent impaired with a full write-off; or (4) an arm's length sale of the loan while impaired. To the extent Welltower Inc. elects not to contribute further funds under the Developer Backstop to help ensure completion of the 125 Holland Project under those circumstances, Welltower Inc. will be required to pay into the Town's Affordable Housing Trust any funds not previously advanced by the Developer under its Developer Backstop.

If (1) Welltower has not advanced the full amount of the Developer Backstop prior to the later of (i) December 31, 2023 or, (ii) the term of any applicable construction loan as the same may be extended by the construction lender, and (2) the 125 Holland Road Project has not been completed by such date, Welltower Inc. will be required to pay into the Town's Affordable Housing Trust any funds not previously advanced under the Developer Backstop, unless it has already done so.

It is understood that the text of the Proposed 125 Holland Warrant Article may be amended at Town Meeting, provided that such amendment/s in the reasonable judgement of the 125 Holland Developer, do not impose burdens on the 125 Holland Project which are materially adverse to the Developer or the ability of the 125 Holland Developer to complete the 125 Holland Project (which may include increased construction or operation costs or decreased maximum affordable sales prices). If any such amendment/s to the text of the Proposed 125 Holland Warrant Article do impose burdens on the 125 Holland Project as set forth in the preceding sentence, then Developer or the 125 Holland Developer shall so notify the Town in writing within seven (7) business days of the conclusion of Town Meeting, and in such case the provisions of Section 2(b) below shall automatically come into effect.

- b. Cash Option. Upon the occurrence of the Cash Trigger Conditions (as hereinafter defined), in lieu of the 125 Holland Project, the Developer shall fully satisfy all obligations arising under Section 4.08 or other operative provision of the Zoning By-law with respect to affordable housing by making a cash contribution to the Town's Affordable Housing Trust Fund (the "Cash Contribution") equal to Six Million Five Hundred Twenty Five Thousand Dollars (\$6,525,000) in two installments. Per Section 4.08 of the Town's Zoning By-Law, this obligation (minus the initial 25% payment if paid in advance) shall be secured at Developer's discretion via a recorded legal instrument or letter of credit satisfactory to the Community Development Division prior to issuance of a building permit for the Project. Fifty percent (50%) of the Cash Contribution shall be payable thirty days after the later of (i) the issuance of the first non-appealable building permit for the Project, and (ii) the occurrence of a Cash Trigger Condition. The balance of the Cash Contribution shall be due prior to the issuance of the final Certificate of Occupancy for the Project. Early advances on the 50% final payment may be made on a mutually agreed upon basis between the Select Board and Developer with incentives for early payments to be negotiated in good faith. Any unpaid balance 48 months following an appeal-free Special Permit shall accrue interest at an annual rate equal to the monthly 10-year U.S. Treasury rate.

As used herein, the term "Cash Trigger Conditions" shall mean and include either of the following: (1) the Town Meeting beginning in May, 2020 fails to approve the Proposed 125 Holland Warrant Article, or it is approved with one or more material adverse text amendments as set forth in Section 2(a) above, or the Attorney General does not approve it or the rescission thereof; or (2) the 125 Holland Developer fails to close on a construction loan by December 31, 2021.

3. WEST PARCEL

- a. Possible Acquisition of West Parcel by the Town. The Town agrees to take such actions as are required to cause there to be a vote of all the Town's electorate by no later than May 8, 2020 to approve a so-called debt exclusion enabling the Town's acquisition of the West Parcel for a purchase price (the "West Purchase Price") equal to Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000). In anticipation of that vote, the Town shall propose for the 2020 Annual Town Meeting the following warrant articles (collectively, the "Proposed West Parcel Warrant Articles"): (i) a warrant article authorizing the Town to acquire the West Parcel for the West Purchase Price, in the form of Exhibit H annexed hereto, and (ii) a warrant article authorizing the Town's chosen method for financing the acquisition. If the Town electorate approves the debt exclusion by majority vote, the Developer and the Town shall negotiate in good faith to enter into a purchase and sale agreement for the conveyance of the West Parcel to the Town (the "West Parcel PSA") for the West Purchase Price with a closing to take place no later than thirty (30) days after the satisfaction of the Town Meeting Approval Conditions (or as otherwise agreed to by the Parties), and on terms otherwise reasonably acceptable to the Parties. Developer shall carry commercially reasonable property insurance until closing to cover any potential property loss. Without limiting the generality of the foregoing, it is understood that the West Parcel shall be conveyed to the Town on an "as-is, where-is" basis without any representation or warranty as to the condition of the West Parcel or any improvements thereon or its potential development.
- b. Possible Profit Sharing Upon Sale of West Parcel. Upon the occurrence of any Profit Sharing Trigger Conditions (as hereinafter defined), the Developer shall commence and thereafter use commercially reasonable efforts to market the West Parcel for sale to a third party. Such commercially reasonable efforts may include, at Developer's discretion, retaining a qualified real estate brokerage firm to assist with the marketing of the property in order to achieve the best possible price on terms and conditions that are acceptable to the Developer in its discretion. Developer shall send to the Town or its consultant for informational purposes only Welltower's marketing and disposition plan for the West Parcel. It is understood and agreed that whether or not to sell the West Parcel, the identity of any purchaser, the timing of such sale, and all other terms and conditions of any such potential sale shall all be in the Developer's sole discretion. If the purchase price Developer is willing to accept for the West Parcel in an arms-length transaction exceeds the West Purchase Price then Developer shall pay to the Town an amount (the "Town's Share") equal to the total of the "Incremental Town Proceeds, as shown on the Chart entitled "Profit Sharing Structure – Newbury College West Side" and annexed hereto as Exhibit I, less the Developer's out of pocket transaction costs incurred by the Developer in connection with the sale. The Town's Share shall be paid by the Developer to the Town not later than seven (7) business days after the closing of such sale, and shall be deposited with the Town Treasurer and held in a separate account until a purpose is authorized. As used herein, Developer's transaction costs shall include reasonable and customary costs and charges incurred by a seller

of commercial property in the Commonwealth of Massachusetts and the Town of Brookline, including, without limitation, broker's fees and commissions, all marketing costs, transfer taxes, costs to clear any title matters, attorneys' and other consultants' fees and expenses related to the sale.

The term Profit Sharing Trigger Conditions shall include any of the following: (i) the Town's voters failing to approve the debt exclusion by May 8, 2020; (ii) the May, 2020 Town Meeting failing to approve the Proposed West Parcel Warrant Articles, or the Attorney General failing to approve the same or the rescission thereof; or (iii) the Parties, despite the exercise of good faith efforts, failing to agree upon the terms and enter into the West Parcel PSA by thirty (30) days after the approval by Town Meeting of the Proposed West Parcel Zoning Articles. It is understood and agreed that if the Parties enter into the West Parcel PSA and the Town subsequently defaults on its obligation to acquire the West Parcel, the same shall not be considered a Profit Sharing Trigger Condition. Rather, upon such a default, the Developer shall immediately be relieved of its obligations under this Section 3 to convey the West Parcel to the Town and any requirement to pay the Town's Share (or any other amount) to the Town upon a sale or other disposition of the West Parcel, without the need for any further documentation to that effect.

Further, should the Developer elect to convey the West Parcel to an entity not subject to taxation by the Town, the Developer shall supply such tax-exempt purchaser with a copy of the Town's Payment In Lieu of Taxes (PILOT) Policy (a copy of which is attached hereto as Exhibit J and require, as a condition of the Purchase and Sale Agreement with said tax-exempt purchaser, that the purchaser meet with the Town Administrator to discuss PILOT Payments prior to closing.

4. FURTHER PERMITTING. The Developer agrees to use all commercially reasonable efforts to diligently apply for and pursue all permits and approvals necessary to proceed with the Project subject to financing and economic conditions. It is understood that the Developer will be subject to the timeframes applied to the Project by the Proposed Project Zoning Amendment, including all sunset provisions. Further, it is of great importance to the Developer that it be able to commence construction of the Project as soon as possible. Accordingly, to the maximum extent permitted by law, the Town agrees to take such actions as may be reasonably necessary or appropriate to expedite review and approval of the Project so that Developer (or any affiliate thereof) can receive a building permit for the Project as soon as possible. Such actions shall include the formation by the Town of a Design Advisory Team ("DAT") for the Project as a so-called "Major Impact Project" under the Town's Zoning By-law within fifteen (15) days after Town Meeting approval of the Proposed Project Warrant Article, and the Town will use best efforts to cause the DAT to begin its review of the Project by no later than June 30, 2020. It is further understood and agreed that the Design Guidelines to be used by the DAT in its review of the Project shall be substantially in accordance with the document attached as Exhibit K hereto. Representatives of the Town Planning Department and Town Counsel's office will use best efforts to attend all meetings of the Developer and Town Preservation Commission at which the Project is discussed, including without limitation, Developer's efforts to expedite

the lifting of the stay of demolition of affected buildings on the East Parcel under the Town's Demolition Delay By-law.

5. RECORDING OF AGREEMENT AND EXECUTION OF TAX CERTAINTY AGREEMENT. Upon satisfaction of the Town Meeting Approval Conditions Developer shall immediately record this Agreement with the Registry at its own expense and shall provide evidence of such recording to Town Counsel; and ii) Developer and the Town shall execute the Tax Certainty Agreement and Developer shall deliver the same to a mutually agreed upon escrow agent to be held in escrow pursuant to mutually agreed upon conditions under the provisions of this Agreement (the "Escrow Agent"). In the event the Town Meeting Approval Conditions are not satisfied by December 31, 2020, and the Developer elects to abandon its permit application and relinquish its right to pursue the Project prior to the issuance of a Special Permit contemplated by the Proposed Project Zoning Amendment, this Agreement and the obligations set forth in the Tax Certainty Agreement shall become null and void and of no force and effect.
6. RECORDING OF TAX CERTAINTY AGREEMENT. In the event that the Special Permit and Other Required Approvals are satisfied, Developer shall deliver notice thereof to the Escrow Agent, who shall promptly thereafter record with the Registry the Tax Certainty Agreement. In the event that the Special Permit and Other Required Approvals are not satisfied, or Developer does not proceed with the Project, either party may deliver notice to the Escrow Agent (with a copy to the other party hereto), and the Escrow Agent shall thereafter immediately return the original copy of the Tax Certainty Agreement to Developer. In such case where the Tax Agreement is returned to the Developer, all further obligations set forth in this Agreement shall become null and void and of no force and effect.
7. TAXABLE PERSONAL PROPERTY. The Developer agrees to have the personal property associated with the Project held in entity taxable to the Town, and taxed at the applicable commercial rate. In the event of a conveyance of the Project to a third party in a bona fide transaction, the Developer shall take steps insure this standard remains in place, absent any changes to the applicable laws or regulations.
8. SUSTAINABLE DESIGN. Upon execution of this Agreement, the Town and the Developer agree to work in a voluntary partnership such that the development process of the Project will explore, pilot and innovate sustainable practices from conceptual design through full occupancy ("Voluntary Sustainability Partnership"). The purpose of this Voluntary Sustainability Partnership is to create replicable best practices that will be shared by the Town and the Developer, to the benefit of the Town, the Developer, and the larger community. Without limiting the generality of the foregoing, the Developer will undertake the following in connection with the construction and operation of the Project (referred to herein as the "Sustainability Undertakings")
 - a. The Project will be constructed in a manner so as to be LEED-NCv4 Gold Certifiable.

- b. The Project will not use natural gas or fuel oil except as necessary for the commercial kitchens, emergency generator, indoor swimming pool and domestic hot water.
 - c. Developer will implement certain sustainable design principals as follows
 - (i) Consider the use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. Overlook, and other site features where feasible.
 - (ii) Stormwater control measures will optimize on-site filtration using rain gardens and bioswales.
 - (iii) Installation of native and drought tolerant plants and bird- friendly and pollinator plants.
 - (iv) Use of Electric vehicles for on-site fleet of passenger vehicles for transporting Project residents, including providing electric vehicle charging stations in excess of current Town requirements for Project residents and guests. On-site fleet will be registered in Massachusetts and garaged at the property in a manner that allows the application of Town vehicle excise tax.
 - (v) Providing bicycle parking on site to accommodate residents, staff, and visitors with shower and dressing room access to be provided to employees who may choose to bike to work.
 - (vi) Use of full cut-off exterior light fixtures with LED lighting and pole mounted fixtures limited to surface parking areas.
 - (vii) Provide visual and physical access to vegetation.
 - (viii) General design spaces designed to support social connection.
 - d. To the extent feasible as reasonably determined by the Developer, it will implement so-called Passive House strategies to reduce energy use.
 - e. Developer will optimize energy efficiency of building systems, including
 - (i) Providing water-efficient plumbing fixtures,
 - (ii) Performing Building Commissioning, and
 - (iii) Training for Operations and Maintenance
 - f. To the extent feasible as reasonably determined by the Developer, Developer will implement WELL strategies to provide users with a healthy building, including
 - (i) Optimizing daylighting and views,
 - (ii) Specification of healthy building materials, and
 - (iii) Providing healthy indoor air quality measures
 - g. Developer will optimize the building for solar renewable energy measures and will consider photovoltaic and solar thermal where feasible.
9. **VOLUNTARY SPECIAL PERMIT CONDITIONS:** The Developer hereby acknowledges that the following conditions of the Special Permits for the Project shall be acceptable to the Developer and shall not be grounds for objection to the Special Permits granted by the Brookline Zoning Board of Appeals (Board of Appeals):

- a) To the fullest extent permitted by law, the Developer shall comply with all terms of this Memorandum of Agreement, as such Agreement may be amended from time to time, in accordance with the provisions herein.
- b) The Project will include a maximum of 160 units of which no more than 120 shall be a combination of independent living units (IL) and assisted living (AL) units, with the balance to be memory care (MC) units, it being understood that the precise unit mix may change from time to time in accordance with the provisions of this paragraph. The base numbers of 80 IL units and 40 AL units may vary such that there will be between 74 and 86 IL units and between 34 and 46 AL units, subject to the cap of a total of 120 IL and AL units. Further, to the extent there are fewer than 120 IL and AL units, the number of units below 120 may be MC units. Nothing in this paragraph shall preclude Developer from reducing the overall number of units in the Project (such as, by way of example, only combining separate units into a single unit). The following are examples only of permissible unit mixes: (1) 74 IL, 40 AL, 46 MC; (2) 74 IL, 46 AL, 40 MC; (3) 76 IL, 36 AL, 48 MC; (4) 70 IL, 30 AL, 40 MC.
- c) The Project will have bulk and dimensional limits meeting the requirements of the Proposed Project Zoning Amendment, and have parking provided for 98 vehicles, of which only 55 may be surface parking.
- d) In accordance with the Proposed Project Zoning Amendment, if Developer determines that the number of surface parking spaces (55) can be reduced without impacting the neighborhood it may seek a modification to the Special Permit to reduce the surface parking subject to review and approval by the Director of Engineering and Transportation.
- e) All illuminated exterior signage shall be designed and installed with the ability to be automatically dimmed after midnight.
- f) Developer will comply with the Sustainability Conditions.
- g) Unless otherwise agreed to by the Preservation Planners the applicant shall, using available records and to the extent it is feasible to do so, provide historic documentation of the following buildings on the East Parcel, prior to the issuance of a demolition or other building permit with respect to such buildings: _____. Issuance of the demolition permit shall be evidence that this condition has been satisfied.
 - i. This documentation shall include:
 - 1. background information: the historic and common names of the property, documentation of date of construction, complete stylistic and/or architectural description of the resource, description of architectural and/or associative significance using reliable sources, contextual information that equates the significance of the property,

original and current function, and the name and biographical information of architect and/or builder.

2. drawings, maps, and historic images: site plan showing footprint of the subject resource and surrounding buildings; sketch floor plans of existing conditions of all levels of each building, or copies of original plans if available (8 ½ x 11 format or digital format); if available, clear copies of historic photographs; USGS quad/topo map indicating location of property with UTM's;
 3. photographs of: overall site showing context and setting; each exterior elevation of subject property; detail images of significant character-defining features, such as windows, doors, eave details, porches, balconies, etc.; general views of all significant interior spaces; detail images of significant structural details if building is of a rare construction method (i.e. post and beam, balloon framing, mortise and tenon joinery, etc.). All photos must be identified with a list of the photographs indicating property name, address (city, county), date of photograph(s), and view; unmounted.
 - ii. All non-photographic documentation shall be submitted in 8 ½ x 11 format and printed on archivally stable paper (25% cotton bond or better) and provided in digital format (min 300dpi).
 - iii. All photographic documentation shall be provided in 5x7 or 8x10 format using archival quality paper and provided in digital format (min 300 dpi).
- h) Developer shall propose a Transportation Demand Management Plan for approval by the Director of Engineering & Transportation and the Planning and Community Development Director (or designee).
 - i) The Project Operator will partner with the Council on Aging and/or Brookline CAN on various cultural, educational and/or musical/artistic events at least quarterly per year with the location and logistics of such events to be agreed to in advance by the Project Operator and the Director of the Council on Aging or Brookline CAN as the case may be. Such events shall be at either the Project Site or the Senior Center or other public place as mutually agreed upon. The Developer has also agreed to make a voluntary contribution of \$2500 per year to the Brookline Multi-Service Senior Center Corporation to support its programming for so long as the Developer or any affiliate thereof owns and operates the Project.
 - j) Developer will provide community space for meetings of local neighborhood associations or other Brookline non-profits a minimum of twelve times per year.
 - k) Developer will provide a landscaped buffer to abutters on the South side entry.
 - l) Developer will remove the existing curb cut on Holland Road to reduce traffic.

- m) Developer will provide a Public Easement Area to create a green buffer on Fisher Ave and maintain the existing trees on Fisher Ave (with an approximate current value of \$276,000). The Public Easement Area shall be subject to a Tree Protection Plan, which shall be submitted to the Tree Warden for his review and approval. Trees within the Public Easement Area shall be maintained at Developer's cost.
- n) On-site and off-site pedestrian and landscaping improvements equivalent to those shown and diagrammed on Exhibit B;
- o) Additional pedestrian, bicycle, and traffic infrastructure mitigation may be required subject to further study and analysis during the Major Impact Project review process. Such mitigation is anticipated by Developer to include the following:
 - i. bicycle parking on site to accommodate residents, staff, and visitors with shower and dressing room access to be provided to employees who may choose to bike to work.
 - ii. To the extent feasible, new on-site pedestrian walkways will provide connectivity to/from the existing public sidewalk and crosswalk network around the site to enhance pedestrian mobility for residents and employees.
- p) Developer will maintain the Mitton House and its addition for adaptive reuse in its Project design.
- q) The Project operator will hold a job fair at the Brookline Teen Center or other public venue, and to the extent permitted by law will give qualified Brookline residents preference for jobs at the facility. In order to make Brookline residents aware of job opportunities the Project operator will send a notice at reasonable intervals of such job opportunities to the Town's Director of Diversity and Inclusion and he/she may post and/or share with other interested parties. The Project operator will also work with the Brookline High School culinary arts and restaurant program to provide, from time to time paid or unpaid internship opportunities for students engaged in the culinary arts program at the High School.
- r) Developer will pay for the relocation and raising of the crosswalk on Fisher Avenue in front of the proposed development.
- s) Balfour Senior Living, or an affiliate thereof shall be the initial manager of the Project.

10. Standard Requirements:

All Parties to this Agreement agree that the Project shall not, by way of this Agreement or the Proposed Project Zoning Amendment, be exempt from any charges, fees monetary or otherwise, that have been promulgated as of the date hereof pursuant to statute, by-law, regulation or written policy.

11. Undertakings of the Town:

On _____, 2020 the Select Board voted favorable action on the Proposed Project Zoning Amendment, Tax Certainty Agreement, the Proposed West Parcel Warrant Articles and a Warrant Article related to the general authorization for this Memorandum of Agreement subject to the terms and conditions of this Agreement and shall convey its votes and favorable report to the Advisory Committee and in the Combined Reports which shall be delivered to all Town Meeting Members. The Select Board shall support and undertake action necessary to obtain the approval of the Attorney General of The Commonwealth of Massachusetts of the Proposed Project Zoning Amendment by Town Meeting. The Select Board shall also, to the extent appropriate, cooperate with the Developer and shall encourage Town staff to cooperate with the Developer in reviewing in a timely and expeditious manner any required permits and approvals for the Project.

11. Miscellaneous:

- a) It is the intent of the Parties that the obligations in this Agreement shall run with the land comprising the Project and be binding upon and inure to the benefit and burden of the Developer and its mortgage lenders and their heirs, successors and assigns during their respective periods of ownership of and/or interests in the Project and its components and shall survive any transfer of the Property or any portion thereof. The Developer agrees to provide a copy of this Agreement to any transferee of the Property or any portion thereof.
- b) Each of the Parties signing below hereby represents and warrants that it is authorized to enter into this Agreement and execute the same on behalf of, and to bind legally, such Party.
- c) All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Select Board
Town of Brookline
333 Washington Street
Brookline, MA 0 2445

with a copy to:

Town Counsel
Office of Town Counsel
333 Washington Street
Brookline, MA 02445

If to Developer addressed as follows:

Welltower Inc.
4500 Dorr Street

March 5, 2020

Toledo, OH 43615
Attention: General Counsel

with copies to:

Welltower Inc.
767 5th Avenue, 8th Floor
New York, NY 10153
Attention: Investment Team

Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110
Attention: Steven Schwartz, Esq.

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen, LLP
300 Washington Street
Brookline, MA 02445

Each of the Parties shall have the right by notice to the other to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means.

If and to the extent that either of the Parties is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof to confer the benefits to each respective party as contemplated by this Agreement. For purposes of this Agreement, the term force majeure shall mean any cause beyond the reasonable control of the affected party, including without limitation: acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation, strikes, lockouts; actions of labor unions; condemnation, laws or orders of governmental or military authorities, requirement of statute or regulation, action of any court, regulatory authority, or public authority having jurisdiction; or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation. With respect to any particular obligation of Developer only, the term force majeure shall include the denial or, refusal to grant or appeals of any permit or approval of any public or quasi-public granting authority related to the Town Meeting Approval

Conditions and Special Permit and Other Required Approvals, and any litigation brought by a third party relating to any such obligation.

- d) Failure by the Developer to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the Developer fails to commence to cure, correct or remedy such failure within sixty (60) days of the receipt of written notice of such failure from the Town to the Developer and thereafter fails to complete such cure, correction or remedy within ninety (90) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such ninety (90) day period, within such additional period of time as is reasonably required to remedy such default, provided the Developer exercises due diligence in the remedying of such default and notifies the Town of the steps being taken to remedy the default.
- e) The Parties agree that time is of the essence with respect to the obligations of the Parties as set forth herein. Subject to market conditions and financing availability, the Developer agrees to use best efforts to diligently apply for the necessary special permits and then expeditiously as possible after the issuance of the Special Permit(s) for the Project to apply for all necessary building permit(s) and to diligently commence work on the Project subject to the terms herein. The Town agrees to request an expedited determination from the Office of the Attorney General with respect to the Proposed Project Zoning Amendment.
- f) The obligations of the Developer do not constitute the personal obligations of the Developer's employees, shareholders, members, directors or officers and the Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. In no event shall the Developer be liable for any incidental, indirect, punitive or special or consequential damages.
- g) Each Party agrees from time to time, upon not less than ten (10) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement (or, if not, specifying the respects in which the requesting party is not in compliance in reasonable detail), in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant, mortgagee or other party having an interest in the Property and any component of the Project.
- h) Upon full performance by the Developer of its obligations hereunder, the Town, at the Developer's request shall issue a statement in a form appropriate for recording with the Registry stating that all of the terms of this Agreement have been satisfied.
- i) Whenever the consent or approval of any party is required for another party to take an action under this Agreement, except where explicitly provided to the contrary, such consent or approval shall not unreasonably be withheld, delayed or conditioned.

- j) This Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts and the rights and obligations of the Parties shall be governed by Massachusetts law. Any action to enforce the terms of this Agreement shall be brought in Norfolk County Superior Court.
- k) If any provision of this Agreement or the application of such provision to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of the provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected and shall be valid and enforceable to the fullest extent.
- l) This Agreement and the accompanying 95-year Tax Certainty Agreement set forth the entire agreement of the Parties with respect to the subject matter thereto. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by the Select Board and the Developer.
- m) Non-discrimination: Developer agrees to fully comply with the federal, state, and local nondiscrimination laws, including the provisions of Mass. Gen. Laws, Chapter 151B, in its employment practices, its contracting, and its procurement of goods and services. Developer further agrees that it will take commercially reasonable affirmative steps to establish fair access to employment opportunities at the project with the goal of attempting to create a workforce that is an accurate reflection of the demographics of the qualified available workforce in the Boston /Brookline /Newton geographic area or other area from which the type of employees sought are located.
- n) M/WBE contracting/Procurement: Developer commits to work with the Brookline Office of Diversity, Inclusion, and Community Relations (the Diversity Office) (1) to identify minority and women contractors and subcontractors for the development of the project, (2) to identify minority and women vendors to provide goods and services to the project during construction and once it is operational, and (3) to establish goals for the number of contractors and subcontractors it will attempt to use and the amount of procurement from minority and women vendors and service providers it will attempt to purchase. Once a year Developer agrees to report to the Diversity Office the extent to which it succeeds in achieving its goals as stated above.

(The Remainder of this Page is Intentionally Left Blank – Signature Pages follow)

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first written above.

DEVELOPER

WELLTOWER INC.

By: _____

Its:

Title:

WELLTOWER TRS HOLDCO LLC

By: _____

Its:

Title:

Dated: _____

**TOWN OF BROOKLINE SELECT
BOARD**

Dated: _____

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, and provided identification in the form of _____, and who executed the foregoing as his free act and deed as _____ of _____.

Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, and provided identification in the form of _____, and who executed the foregoing as his free act and deed as _____ of _____.

Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, _____, _____, _____, and _____, personally known to me and who executed the foregoing as their free act and deed as members of the Select Board of the Town of Brookline acting on behalf of the Town of Brookline.

Witness our hands and seals at Norfolk County, Brookline, Massachusetts, this ____ of _____, 2020.

Notary Public
My Commission Expires:

NOTE: FOLLOWING ARE DRAFT EXHIBITS AND/OR PLACEHOLDERS TO BE
REPLACED AND/OR ADDED TO PRIOR TO FINAL EXECUTION.

EXHIBIT A-1

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence

NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence

SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence

SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;

EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;

SOUTHERLY by Tract II herein, 298.18 feet;

WESTERLY by Fisher Avenue, 323.75 feet;

NORTHWESTERLY by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

EXHIBIT A-2

PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY on Fisher Avenue, one hundred and fifty (150) feet;

NORTHERLY on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;

WESTERLY on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;

SOUTHEASTERLY on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and

SOUTHERLY on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;

NORTHERLY by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;

EASTERLY by a line, one hundred and eighty and 80/100 (180.80) feet;

SOUTHEASTERLY by a line, forty-eight and 30/100 (48.30) feet; and

SOUTHWESTERLY on land now or formerly of Judith Sprague, one hundred eighty- two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet ofland, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

EXHIBIT A-3

125 HOLLAND

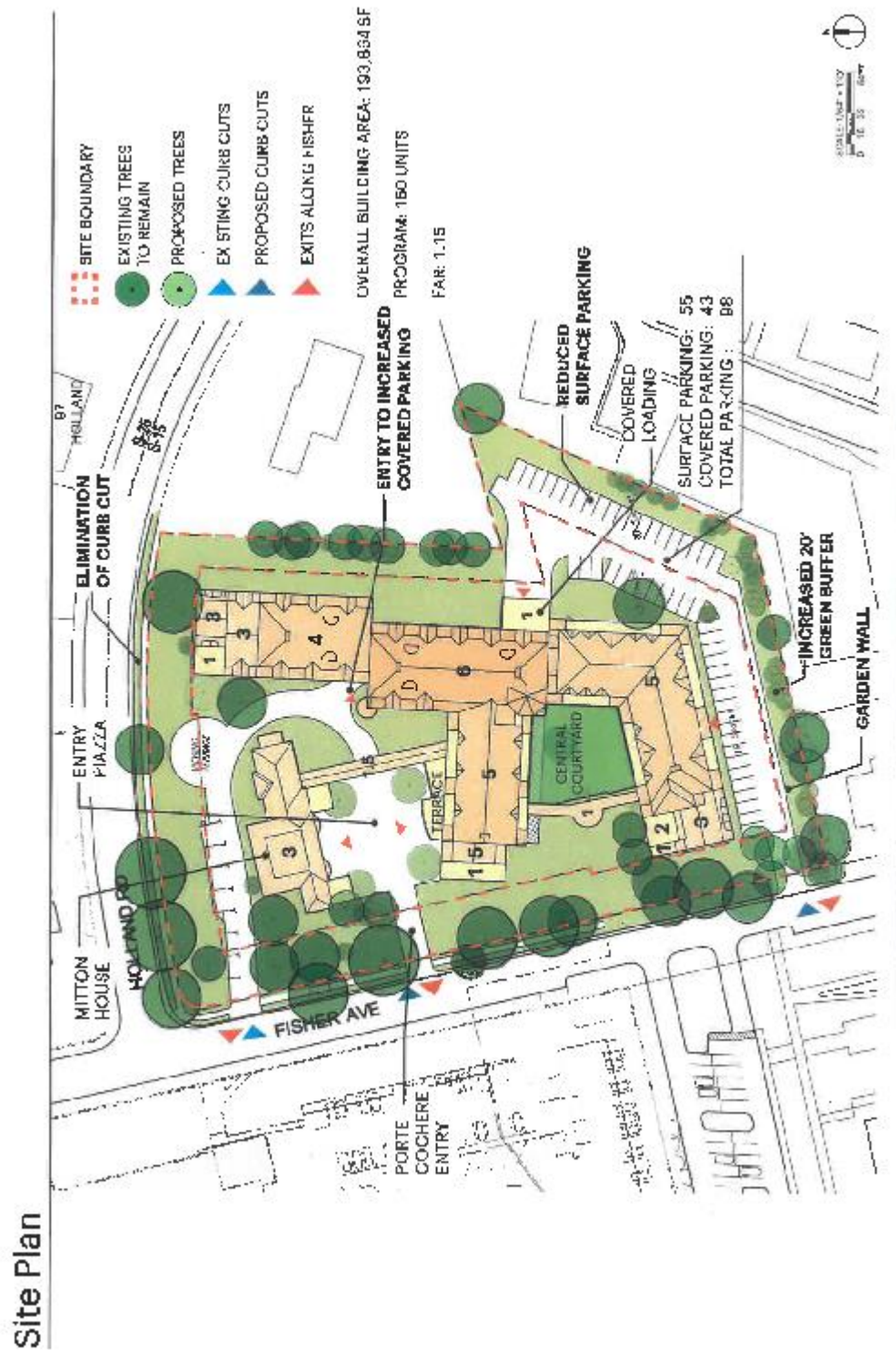
The premises at 125 Holland Road, Brookline, Massachusetts bounded and described as follows:

BEGINNING at a stone bound on the easterly side of Fisher Avenue about 15 feet northwesterly of Holland Road; thence running

NORTHWESTERLY	on said Fisher Avenue 127.50 feet; thence turning at a right angle and running
EASTERLY	by land now or late of Curtis and land now or late of Nash on two courses 215.82 feet and 53.10 feet; thence turning and running
SOUTHERLY	by land now, or late of Curtis 157.08 feet to Holland Road; thence turning and running
WESTERLY	on said Holland Road 224.12 feet to a stone bound, thence turning and running
NORTHERLY	on the street line 23.33 feet of beginning.

Containing 37,930 square feet of land, more or less, and being shown on plans by Ernest W. Bowditch, Engineer, recorded with said Registry in Book 807, Page 458; Book 1007, Page 553; and Book 1081, Page 378.

EXHIBIT B – CONCEPT SITE PLAN AND BUILDING MASSING



Landscape Plan- Draft



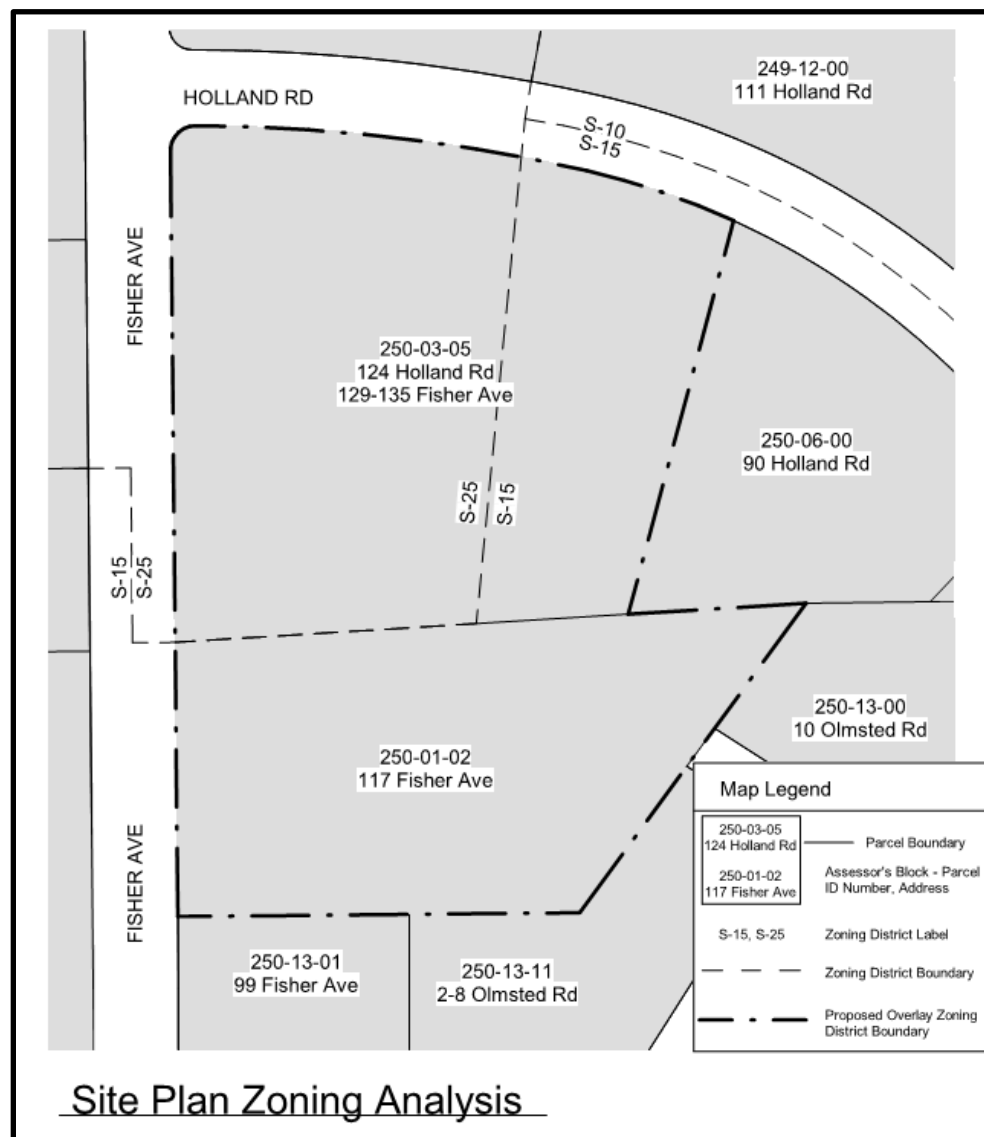
EXHIBIT C – Proposed Project Zoning Article

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ____: Fisher Hill Special Overlay District Zoning

To see if the Town will amend the Zoning By-Law and Zoning Map as follows:

1. By adopting the following map change, adding a Fisher Hill Special Overlay District as shown below, including: parcels with Tax Parcel Identifications 250-03-05 (124 Holland Road and 129-135 Fisher Avenue) and 250-01-02 (117 Fisher Avenue).



2. By amending Section 3.01.4 by adding a new item at the end:

“g. Fisher Hill Special Overlay District”

3. By amending Section 4.07 – Table of Use Regulations – to allow for life care facilities on lots less than 5 acres but greater than 3 acres in the overlay district, by adding a sentence at the end of the description of Use 6A in the Use Table, underlined below:

Use 6A, Life care facilities, incorporating independent apartment living units for elders combined with supportive medical, nursing or other shared facilities.

*Allowed by special permit only on lots greater than 5 acres, but within the Fisher Hill Special Overlay District, the minimum lot size shall be 3 acres.

4. By amending Section 5.01 – Table of Dimensional Requirements – by adding Footnote 22 after the words “Any other structure or principal use” in the rows for the S-25 and S-15 Districts, which Footnote 22 shall also be added at the end of the Table and read as follows:

“22. See Section 5.06.4 – Special District Regulations, subsection l. Fisher Hill Special Overlay District with respect to uses and all dimensional requirements.”

5. By amending Section 5.06.4 – Special Districts – by adding a new item as follows:

“l. Fisher Hill Special Overlay District

1) It has been determined through study of the former Newbury College campus that the potential exists for careful, planned redevelopment. It has further been determined that, due to the surrounding residential development pattern, and the municipal need for housing for an aging population, assisted living residential uses in a life care facility designed with a similar architectural character as the neighborhood are appropriate. Benefits to the community include maintenance for adaptive reuse of the Mitton House and creating a public easement along Fisher Avenue to preserve mature shade trees, and are significant reasons for why additional density may be allowed by Special Permit under the criteria of this section.

2) At any point prior to December 31, 2020, an applicant may seek relief by Special Permit under this Overlay District by completing the Design Review preapplication process as set forth in Section 5.09 (3)(a)(2) provided the proposed project includes the following requirements and limitations:

a. Includes a minimum of three acres of contiguous land.

b. Includes a life care facility with a maximum of 160 units as its primary use including all related accessory uses.

3) The Board of Appeals may grant a Special Permit under this section allowing for a project that meets the following requirements and limitations. Conformance with said requirements and limitations shall be made conditions of the Special Permit.

a. Open Space

i. The project must dedicate a minimum of 40% of lot area towards Open Space. For the purposes of this requirement, Open Space shall include parts of a lot at ground level that are contiguous landscaped areas and walkways that include planted containers, landscaped beds, and/or street trees. Usable open space is not a requirement for this use.

*ii. The open space requirements of **Table 5.01 — Table of Dimensional Requirements** may be reduced in accordance with Site Plan Review as noted in **Section 5.06.4.1.4** below.*

b. Parking

i. 98 parking spaces shall be provided with a minimum of 43 concealed.

ii. The number of parking spaces required per Article 6 of the Zoning By-Law may be reduced at the request of the applicant, following review of a parking study and favorable recommendation by the Planning Board.

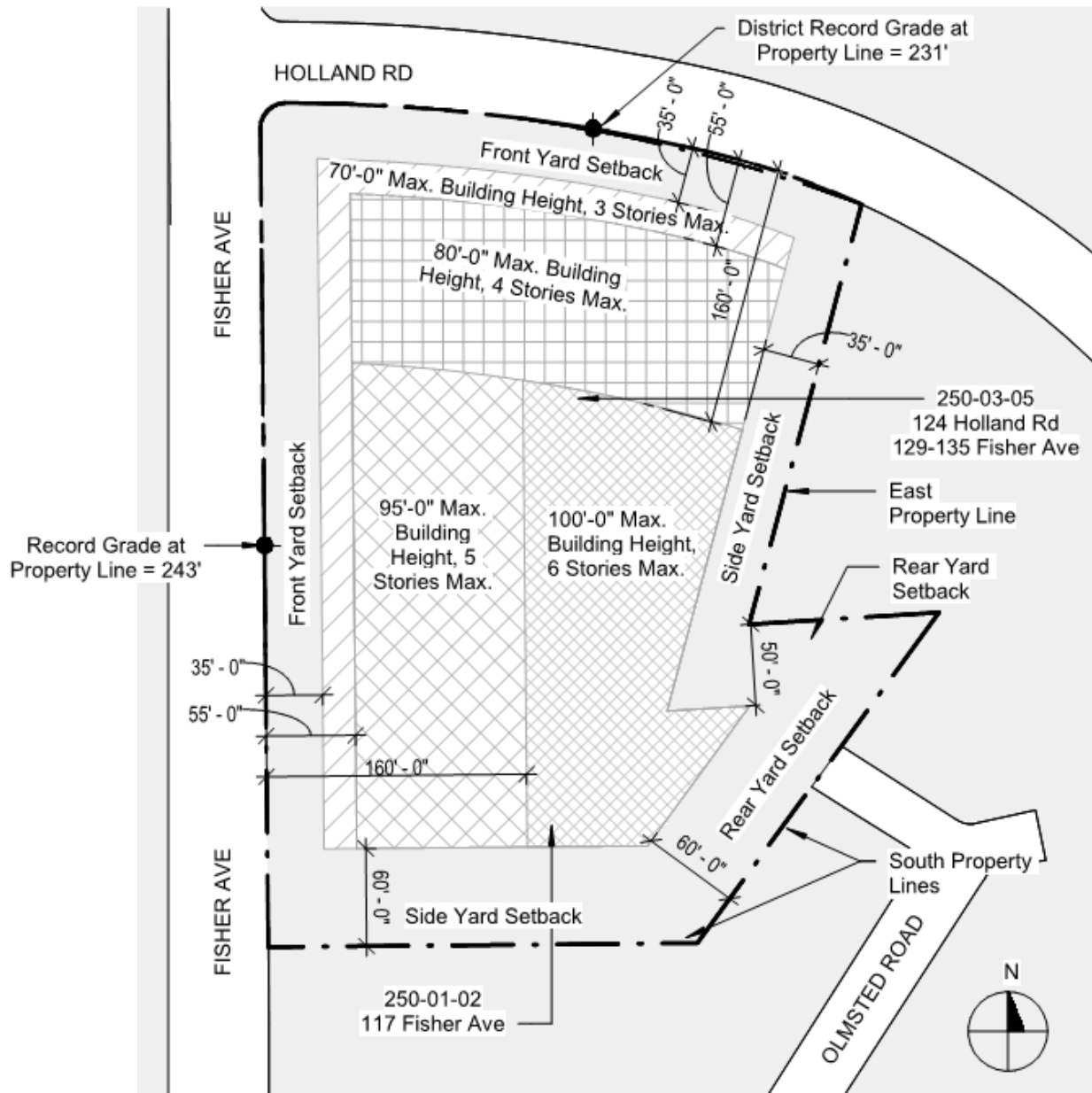
iii. Parking area setback along the southern lot line shall be no less than 20 feet.

iv. The parking and drive requirements under Section 6.04, including stall width and depth, aisle width, and width of entrance and exit drives, may be modified in accordance with Site Plan Review as noted in Section 5.06.4.1.4 below.

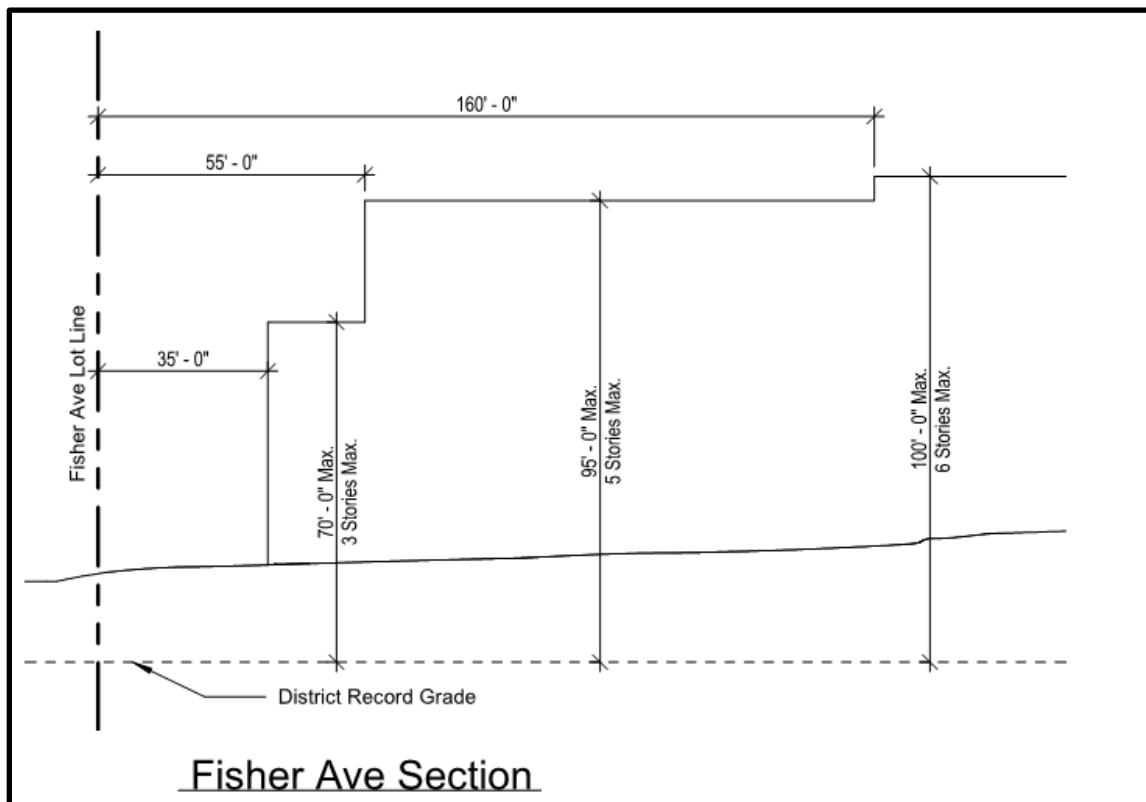
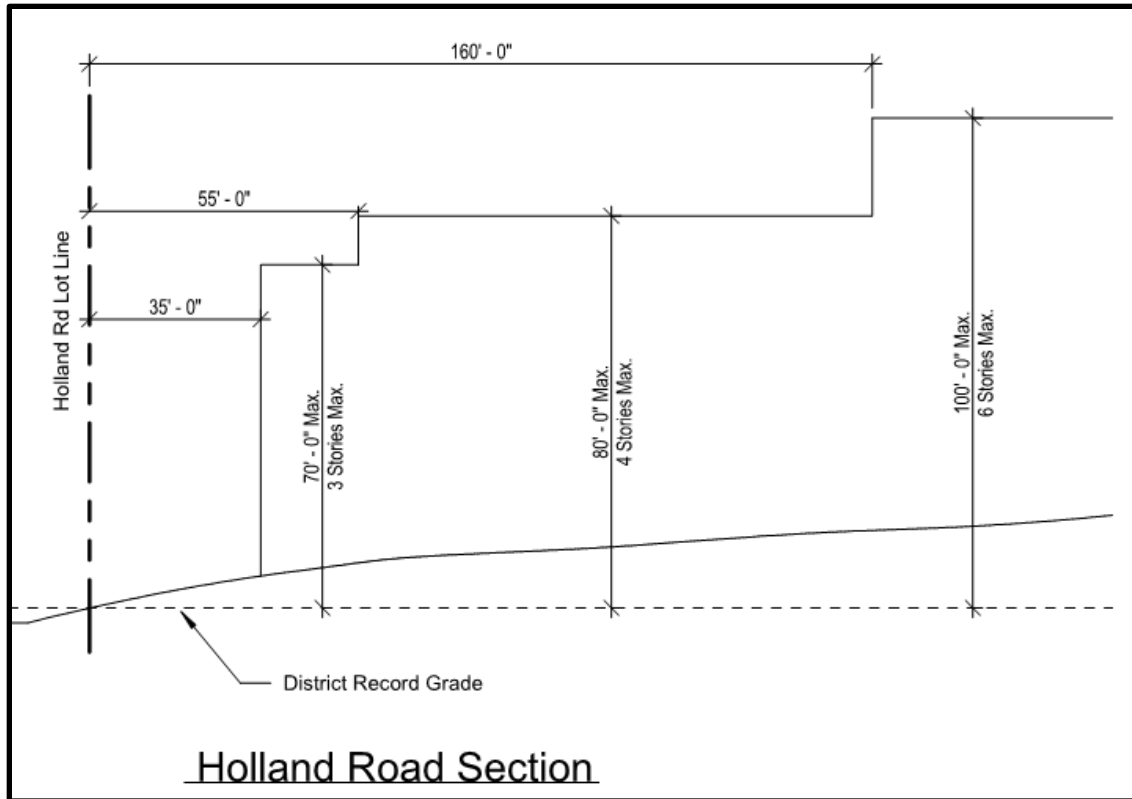
v. Once a minimum of five years have passed since the issuance of a Certificate of Occupancy for any project promulgated pursuant to a Special Permit granted under this Section, the holder of said Special Permit may seek modification of the Special Permit to allow the provision of fewer than 98 spaces, but only through a reduction in the number of non-concealed parking spaces and only

upon a showing to the Zoning Board of Appeals that such a reduction will not impact the neighborhood.

- c. The Gross Floor Area Ratio for a project permitted pursuant to this section shall not exceed 1.15.*
- d. The maximum building height shall be 70' and three stories max. for portions of a building that are within 55' of Fisher Avenue and Holland Road. The maximum building height shall be 80' and four stories max. for portions of a building that are within 160' of Holland Road. The maximum building height shall be 95' and five stories max for portions of a building that are within 160' of Fisher Avenue. Otherwise, the maximum building height is 100' and six stories max. The maximum number of stories does not include basements or means of egress. These maximum building heights do not include rooftop structures such as elevator penthouses, chimneys, mechanical equipment, and mechanical screens. Building heights shall be measured from the District Record Grade rather than as prescribed in Section 5.30. The District Record Grade shall be the record grade of the Holland Road property line at the midpoint of the Holland Road boundary of the Fisher Hill Overlay District. Refer to Building Height and Setback Diagram. The Board of Appeals may grant a Special Permit for projections into front yards that do not comply with Section 5.51.*



Building Height & Setback Diagram



- e. The residential component of the project shall not include more than 160 living units. All 160 units may be market-rate.*
- f. Notwithstanding anything to the contrary in Section 4.08, for the purposes of satisfying the requirements of Section 4.08 the applicant may provide eighteen (18) affordable units off-site within 100 yards of the boundary line of this overlay district or make a cash payment not to exceed Six Million Five Hundred and Twenty Five Million Dollars (\$6,525,000).*
- g. Building setback requirements shall be as follows:
From Fisher Avenue, no less than 35 feet;
From Holland Avenue, no less than 35 feet;
From east side lot line, no less than 35 feet;
From southern side and southern rear lot lines, no less than 60 feet;
From the rear lot line, no less than 50 feet.
Refer to Building Height and Setback Diagram.*
- h. Accessory Structures allowed within the site setbacks include retaining walls, fencing, and utility equipment- ie generator and transformer.
Setback for all structures is 6' min. from any lot line. Where required for emergency vehicle access, retaining walls and fencing can encroach on front yard setbacks.*
- i. Notwithstanding the provisions of Section 6.06.6, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.1.4 below. If the loading zone includes an area for trash and recycling this area for trash and recycling shall be enclosed. If the entire loading zone including the area for trash and recycling is fully enclosed, such area shall not count towards the project's total gross floor area.*
- j. Design Standards: During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Fisher Hill Special District Design Guidelines developed by the Newbury Zoning Committee for guidance on general exterior massing, scale and design.*

4) Any application including new structures that seeks relief under this Overlay District shall:

a. *be subject to Site Plan Review by the Planning Board to ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on-site disposal of hazardous substances; maximize pedestrian, bicycle and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By-Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish and recycling removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:*

i. *Demonstrated design compliance with any General By-Law related to erosion and sediment control and stormwater management;*

ii. *Property lines and physical features, including roads, driveways, parking for vehicles and bicycles, loading areas and trash storage for the project site; and*

iii. *Proposed changes to the landscape of the site, grading, vegetation clearing and planting, and exterior lighting.*

b. *be deemed a Major Impact Project with respect to Section 5.09, Design Review.*

c. *include as a condition of the special permit a Transportation Access Plan Agreement ("TAPA") approved by the Director of Transportation that includes Transportation Demand Management ("TDM") programs.*

5) *Allowing the additional density through the Special Permit contemplated by this Section has a potential benefit contemporaneous with its inclusion in the By-Law.*

However, planning objectives potentially achieved by this Section may not be met if substantial time elapses. Therefore, if upon closing the public hearing on the Special Permit contemplated herein, the Board of Appeals finds: (a) more than two years has elapsed since the opening of the public hearing; and (b) the amount of elapsed time is, in the discretion of the Board, excessive and contravenes the planning objectives of this Section, the Board may deny the request for a Special Permit.

6. By amending Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements – by adding a new footnote as follows:

*“4. For the Fisher Hill Special Overlay District, parking requirements shall be no less than 0.5 space per unit. **Section 6.02.2.h** shall not apply”.*

7. By amending Section 7.07 – Sign By-Law – Exceptions to the Above – by adding to Section 7.07.1 a new item at the end:

“f. The Board of Appeals may by special permit grant relief to the requirements of Section 7.01 for signage for the buildings in the Fisher Hill Special Overlay District subject, however, to compliance with the Design Review Procedures set forth in Section 7.08 and the Design Guidelines adopted for this district.”

...or act upon anything else relative thereto.

EXHIBIT D -

TAX CERTAINTY AGREEMENT – March 5, 2020 version

**IN RE: The parcels known as 117 Fisher Avenue (Assessors' Parcel I.D. No. 250-01-02) and
124 Holland Road (Assessors' Parcel I.D. No. 250-03-05)
BROOKLINE, MASSACHUSETTS
TAX CERTAINTY AGREEMENT**

This Agreement between WELLTOWER INC. a Delaware corporation, having an office at 4500 Dorr Street, Toledo, Ohio 43615 (“Welltower”; Welltower and its successors and assigns in title or interest the Premises are hereinafter collectively referred to as “Developer”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), (Developer and the Town being collectively referred to as the “Parties”) is executed this ____ day of _____, ____ (the “Execution Date”), and made effective upon the date this Agreement is recorded in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court (the “Effective Date”), upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

PREAMBLE

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land in the town and specifically at the former Newbury College site and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town’s existing property tax revenue; and

WHEREAS, Welltower owns the parcels of real property known as and numbered as 117 Fisher Avenue (Parcel I.D. No. 250-01-02) and 124 Holland Road (Parcel I.D. No.250-03-05) sometimes collectively referred herein collectively as the “East Parcel”, which was acquired by Developer pursuant to that certain Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the “Registry”) in Book 37136, Page 283, the legal descriptions of which are attached hereto as Exhibit A, which as of the date hereof consists of a several buildings and a parking lot;

WHEREAS, Welltower, Welltower TRS Holdco LLC, a Delaware limited liability company and the Town are parties to that certain Memorandum of Agreement by and between the Town of Brookline and Welltower Inc. and Welltower TRS Holdco LLC, dated as of [____], 2020 and recorded in the Registry in Book [____], Page [____] (the “Memorandum of Agreement”); Capitalized terms used in this Agreement and not otherwise defined shall have their respective meanings as set forth in the Memorandum of Agreement;

WHEREAS, as of the Effective Date, each of the Town Meeting Approval Conditions and Special Permit and Other Required Approvals have occurred and/or have been satisfied;

WHEREAS, in accordance with and pursuant to the Memorandum of Agreement, Developer and the Town agree to execute this Agreement as of the date hereof and record a copy thereof in the Registry;

WHEREAS, the Town and Developer seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may become exempt from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third or other applicable exemption; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and Developer have agreed that Developer to the Premises will make certain voluntary payments to the Town in certain circumstances in lieu of real estate taxes, as more particularly set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Developer and the Town agree as follows:

1. Developer Commitment to Voluntary Payment to the Town. Commencing with the first fiscal tax year following the Assessment Date, and ending ninety-five (95) years after the Effective Date of this Agreement (the “Term”), if and to the extent Developer is not otherwise obligated to pay real estate taxes for the Premises by virtue of the Premises being used for one or more Exempt Uses or Developer’s tax-exempt status (the “Payment Conditions”), then, with respect to any fiscal tax year for which the Payment Conditions are satisfied Developer shall make a direct financial contribution to the Town in the amount equal to the real property taxes that would otherwise have been levied by the Town for all or any portion of the Premises were the Premises not used for one or more Exempt Uses or were Developer not precluded, based on its status, from the payment of real estate taxes under applicable law in such relevant fiscal tax year (the “Voluntary Payment”). In such event, the Town shall accept the Voluntary Payment in full satisfaction of Developer’s obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Section 2, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. As used herein the term “Assessment Date” shall mean January 1st or another date on which the Town Assessors by statute make the first determination of the value of real property following the Effective Date. As used herein the term “Exempt Use” or “Exempt Uses” shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law, whether currently in existence or adopted during the Term of this Agreement.

2. Payment of the Voluntary Payment to the Town. The Voluntary Payment shall be paid to the Town in quarterly installments on the date real property taxes are due for each fiscal tax year during the Term for which the Payment Conditions are satisfied, and the Town shall provide Developer with a written statement of the portion of any Voluntary Payment due not less than thirty (30) days prior to the due date. Developer shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided Developer shall, before commencing legal action, first use good faith efforts to mediate the issue of valuation with the Town’s Assessors.

3. Termination of Agreement. The Town or Developer shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8, in the event that, at any time after the Effective Date the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by Developer of taxes, similar assessments or payments in lieu of such taxes on the Premises used for one or more Exempt Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or Developer, with the exception of a change that would have the effect of expanding the uses covered by the term “Exempt Uses”. This Agreement shall not in any manner whatsoever restrict the Town’s exercise of its police power. Upon transfer of title of the Premises, the grantor Developer’s obligations under the Agreement shall automatically terminate and the grantee Developer (e.g., the successor owner of the Premises) shall be bound by the terms of this Agreement as more particularly described in Section 8(j) of this Agreement.

4. Period of Restrictions. It is the intent of the parties that the restrictions set forth herein be imposed for the duration of the Term, and Developer hereby agrees and acknowledges that (a) the restrictions set forth herein shall not be deemed to be “unlimited as to time” within the meaning of Massachusetts General Laws, Chapter 184, Section 23, (b) prior to the expiration of the initial thirty (30) years of the Term and prior to the expiration of any subsequent renewal period, this Agreement and the restrictions set forth herein may be renewed by the Town from time to time thereafter for additional periods not in excess of twenty (20) years each, such renewal to be effectuated in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 (as may be amended from time to time) or any successor statute.

5. Representations as to Authority.

i. The Town’s Authority. As of the Execution Date, the Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town’s Bylaws and under the laws of Massachusetts to execute, deliver, perform and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town’s behalf are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

ii. Developer’s Authority. As of the Execution Date, Developer represents that it is duly organized, validly existing and in good standing under the laws of the State of its incorporation, that it is qualified to do business in, and in good standing under the laws of, the State of Massachusetts and that has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. Developer represents that (i) the individual executing and

delivering this Agreement on Developer's behalf has the authority to do so, and such signing authority has been authorized by all necessary corporate action taken by and on the part of Developer, (ii) the Agreement has been duly and validly authorized, executed and delivered by Developer, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of Developer, enforceable against Developer in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against Developer, Developer agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

6. Lien/Collection Remedies. Upon the failure of Developer to make any Voluntary Payment to the Town when the Payment Conditions were otherwise satisfied, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Within no more than ten (10) days following written request from time to time to the Town Tax Collector, the Tax Collector shall provide Developer (e.g., the record owner of the Premises) with a written statement to Developer and any potential purchaser of or lender to the Premises certifying Developer's and the Town's compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

7. Deed Reference and Affirmation of Successor In Title. Developer agrees that during the Term each successive deed of the Premises executed and delivered by the grantor shall contain the following statement:

“Reference is made to that certain Tax Certainty Agreement by and between Developer and the Town of Brookline dated _____, _____, recorded with Norfolk County Registry of Deeds in Book _____, Page _____ (together with all amendments duly made and recorded, the “Tax Certainty Agreement”). By acceptance and recording of this deed, the Grantee (i) acknowledges and accepts the Tax Certainty Agreement, (ii) acknowledges that Grantor is hereby released in full from all obligations of “Developer” under the Tax Certainty Agreement and (iii) agrees that the Tax Certainty Agreement shall be binding and enforceable against the Grantee in accordance with its terms.”

Developer and such successors in title shall notify the Town in the manner provided in Section 8(j) hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 7.

8. Miscellaneous Provisions.

(a) **Notices.** All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:

If to Developer:

Welltower Inc.
4500 Dorr Street
Toledo, OH 43615
Attention: General Counsel

With a copy to:

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen Jr., LLP
300 Washington Street
Brookline, MA 02445

If to the Town:

Town of Brookline
Attn: Town Administrator
Brookline Town Hall
333 Washington Street
Brookline, MA 02445

With a copy to:

Town of Brookline
Attn: Town Counsel
333 Washington Street
Brookline, MA 02445

____ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

____ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

____ By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) Severability/Captions. The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement

is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those Developer obligations that otherwise would survive the Term shall end. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.

(c) Waivers/Time of Essence. The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.

(d) Amendments. This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.

(e) Whole Agreement/Survival. This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 5 and 9, survive the Term for so long as applicable; and all of the provisions of this Section 9 shall also survive the Term in relation to any of this Agreement's other surviving provisions.

(f) Real Property. All references in this Agreement to real property or property owned by or of Developer shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.

(g) Reservations. The Town and Developer agree that this Agreement provides the Town with protection of its tax base, but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its police power or imposes any restrictions on Developer's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, one or more Exempt Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and Developer each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. Developer is entering into this Agreement voluntarily; and nothing in this Agreement or Developer's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by Developer of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by Developer for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by Developer under, and subject to all of the terms and conditions of, this Agreement.

(h) Counterparts. This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(i) Applicable Law. This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(j) Successor In Title. This Agreement shall bind Developer and its successors and assigns in title to the Premises and shall be deemed to “run with the land” for the duration of the Term. Any Developer, as grantor of title to the Premises, shall be released from all obligations as “Developer” under this Agreement upon the execution by such Developer, and subsequent recordation in the Registry, of any deed transferring title of the Premises (a “Premises Deed”), which Premises Deed shall include the paragraph required pursuant paragraph 7 above. Simultaneously with the recording of a Premises Deed in the Registry, either grantor or grantee thereunder shall provide written notice to the Town of the recording of such Deed, the transfer of title to the Premises, and the notice addresses for grantee thereunder for purposes of notices under this Agreement, including, without limitation, Section 8(a).

(k) Recording. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court.

IN WITNESS whereof the parties have executed this Agreement under seal as of the Effective Date.

Welltower Inc.

Town of Brookline
Select Board:

By _____

Hereunto duly authorized

Date: _____

Hereunto duly authorized
Date:

County of Lucas

State of Ohio

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ of Welltower Inc. as _____ of _____ through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

Notary Public

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

My Commission

March 5, 2020

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this _____ day of _____ 20__, before me, the undersigned notary public, personally appeared _____, _____, _____ Select Board, of the Town of Brookline, proved to me through satisfactory evidence of identification to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the Board of Selectmen of the Town of Brookline.

Notary Public

Personally Known _____
 Produced Identification _____
 Expires: _____
 Type of Identification _____

My Commission

Exhibit A

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence

NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence

SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence

SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;

EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;

SOUTHERLY	by Tract II herein, 298.18 feet;
WESTERLY	by Fisher Avenue, 323.75 feet;
NORTHWESTERLY	by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

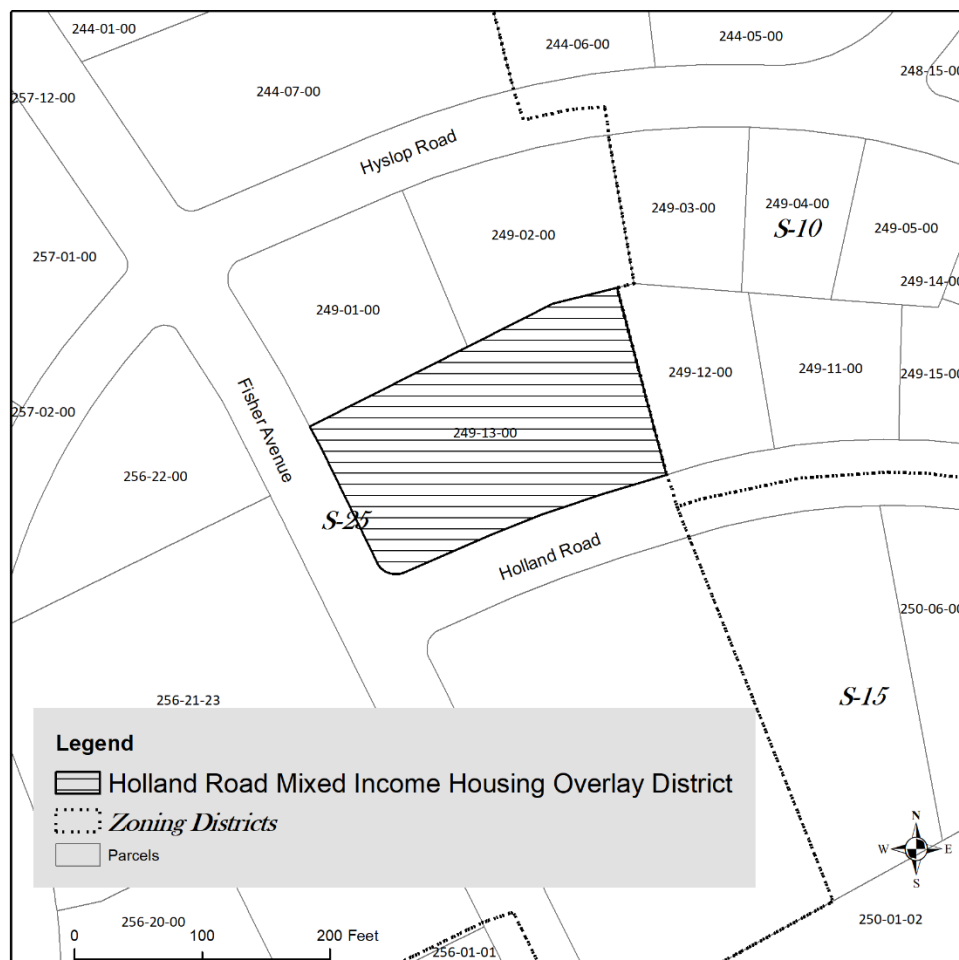
Exhibit E – 125 Holland Zoning Article

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ____: Holland Road Mixed Income Housing Overlay District

To see if the Town will amend the Zoning By-law and Zoning Map as follows:

- 1. By adopting the following map change: adding a Holland Road Mixed Income Housing Overlay District including the parcel located at 125 Holland Road (Tax Parcel Identification #s 249-13-00), as shown in the map below.**



- 2. By amending Section 3.01.4 by inserting a new item “h” as follows:**

h. Holland Road Mixed Income Housing Overlay District

3. By amending Section 5.06.4 by inserting a new item “m” as follows:

m. Holland Road Mixed Income Housing Overlay District

- 1) It is found that the parcel of land at 125 Holland Road, formerly a part of the Newbury College campus (the “Site”) has been identified by the Newbury Zoning Committee, based on a recommendation from the Housing Advisory Board, as an appropriate site for mixed-income affordable housing development. For this reason, a developer may opt to develop the Site in accordance with the requirements of this overlay district.
- 2) Any applicant may seek relief under this overlay, provided the applicant’s proposed development meets the following requirements:
 - a. It contains 18 Dwelling Units, contained in a single building.
 - b. Six (6) of the Dwelling Units on the Site must be Affordable Units (as defined in Section 4.08.2.c.) for households with incomes up to 80% of Median Income, defined in accordance with Section 4.08.2.f and which must also qualify for the Town’s Subsidized Housing Inventory as per Massachusetts General Laws Chapter 40B and 760 CMR 56. Six (6) of the Dwelling Units on the Site must be Affordable Units for households with incomes up to 100% of Median Income. Six (6) of the Dwelling Units on the Site must be Affordable Units for households with incomes up to 150% of Median Income.
 - c. It has a viable plan for maintaining affordability for the longest period permitted by law that has been approved by the Department of Planning and Community Development.
- 3) Multi-Family Dwellings. Superseding any conflicting restrictions in Section 4 of the Zoning Bylaw, any development proposed pursuant to the requirements of this overlay district:
 - a. may include Multi-Family Dwellings;
 - b. is not required to meet the requirements of Section 4.08, with the exception that the development must meet the “Standards” requirements listed under Section 4.08.6. With respect to the standard for unit sizes described in 4.08.6.c, any project proposed pursuant to this section will be deemed to meet the standard if the average unit size for the units with the

applicable bedroom count meets or exceeds the listed square footage, so long as no individual unit has less than 95% of the prescribed square footage.

- 4) All applications in the Holland Road Mixed Income Housing Overlay District shall be subject to §5.09, Design Review, including any applicable Design Guidelines adopted by the Planning Board. Further, the Zoning Board of Appeals shall be empowered to require such other conditions as it deems necessary to bring the project into conformance with the goals of this overlay district, including a modification of the affordability requirements in 5.06.4.m2.b. The Zoning Board of Appeals may only grant a modification of the affordability requirements in 5.06.4.m.2.b that raises the applicable Median Income levels following a favorable recommendation from the Housing Advisory Board and in no case shall the affordability requirements be modified to provide fewer than 4 Affordable Units for households with incomes up to 80% of Median Income and 4 Affordable Units for households with incomes up to 100% of Median Income, and in no case can any of the Affordable Units be available for households with incomes greater than 150% of Median Income.
- 5) Dimensional and Parking Requirements. Any development proposed pursuant to the requirements of this overlay district shall be subject to the dimensional requirements listed below, superseding any conflicting requirements in Sections 5 and 6 of the Zoning Bylaw for the underlying zoning district. Any dimensional requirements not specified below shall be required according to the requirements of the underlying zoning district.
 - a. Lot size. A minimum lot size of 35,000 square feet shall be required.
 - b. Floor Area Ratio. An overall maximum Floor Area Ratio of 0.5 shall be permitted.
 - c. Height. A maximum height of 40 feet, measured from the record grade of the midpoint of the lot line along Holland Road, shall be permitted.
 - d. Setbacks. A minimum Front Yard setback of 30 feet, a minimum Side Yard setback of 40 feet, and a minimum Rear Yard setback of 40 feet shall be provided. Relief from these setback requirements may be sought under Section 5.43.

- e. Open Space. A minimum amount of Landscaped Open Space of 40% of Gross Floor Area and a minimum amount of Usable Open Space of 10% of Gross Floor Area shall be provided.
- f. Parking. Parking shall be provided at a minimum rate of 1 space per Dwelling Unit.

Or take any action thereto.

Exhibit F – Conceptual Site Plan – 125 Holland

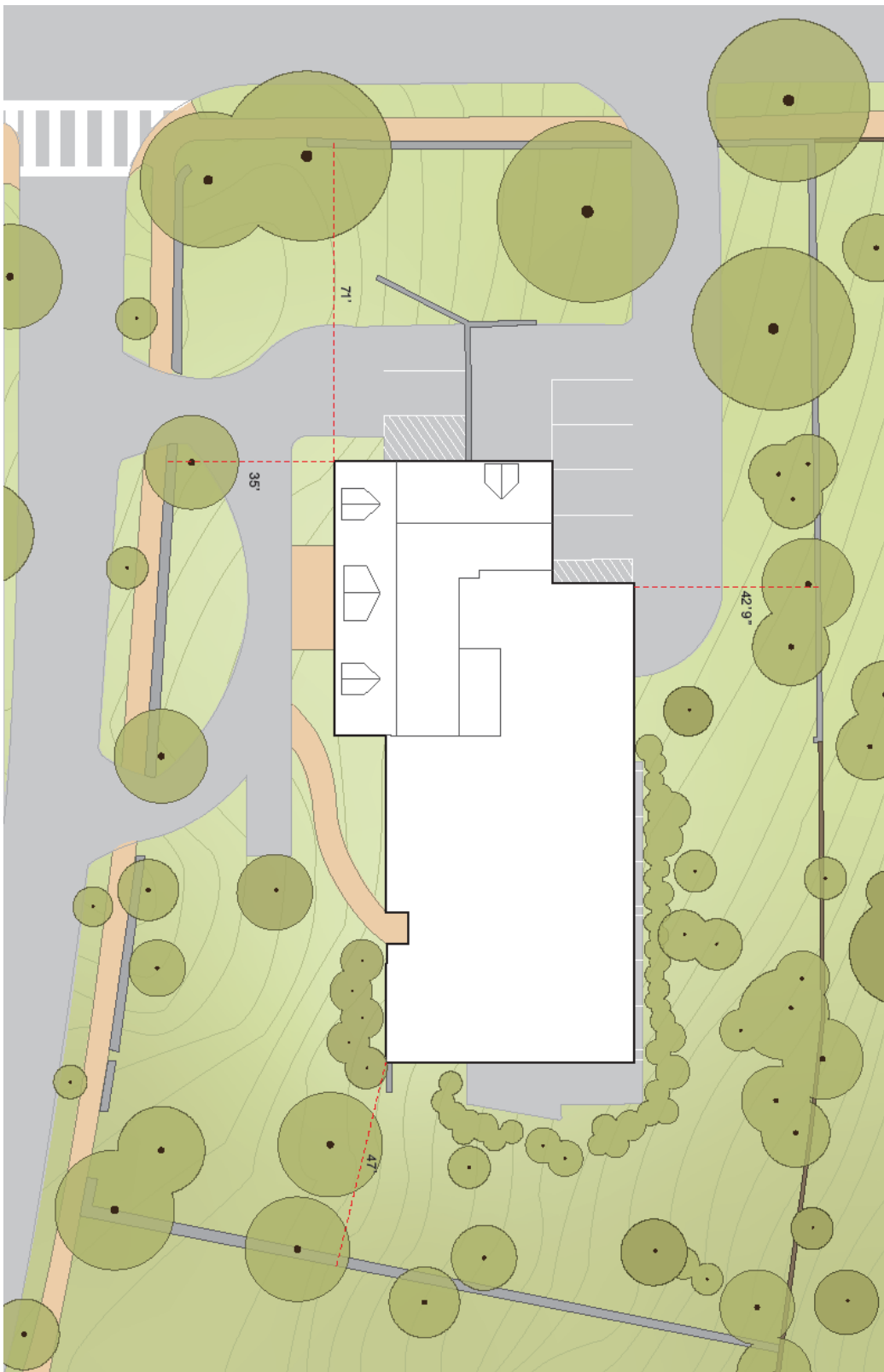


Exhibit G – Deed Restriction

[TO BE INCLUDED PRIOR TO EXECUTION]

Exhibit H – Article for Town to Acquire West Parcels

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article____: Authorization to Acquire Former Newbury College West Campus

To see if the Town will vote to authorize the Select Board to acquire, by purchase, gift, eminent domain or otherwise, in fee simple, the parcels of land located at 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road (Tax Parcel Identification #s 255-01-01, 256-24-00, 256-21-23, and 256-20-00) including all buildings and structures thereon and all privileges and appurtenances thereto belonging, as well as all trees and shrubs thereon, for general municipal purposes, and for all purposes and uses accessory thereto, and that to meet such expenditure to appropriate a sum of money to be expended at the direction of the Select Board, to pay costs of acquiring said property, and for the payment of all costs incidental and related thereto, including refurbishment of the buildings thereon, and to determine whether such amount shall be raised by taxation, transfer from available funds, borrowing or otherwise; to authorize the Selectmen to apply for, accept and expend any grants from any source whatsoever that may be available to pay any portion of this project or to take any other action relative thereto.

Land Description:

PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY	on Fisher Avenue, one hundred and fifty (150) feet;
NORTHERLY	on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;
WESTERLY	on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and
SOUTHERLY	on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY	on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;
NORTHERLY	by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;
EASTERLY	by a line, one hundred and eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	by a line, forty-eight and 30/100 (48.30) feet; and
SOUTHWESTERLY	on land now or formerly of Judith Sprague, one hundred eighty- two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

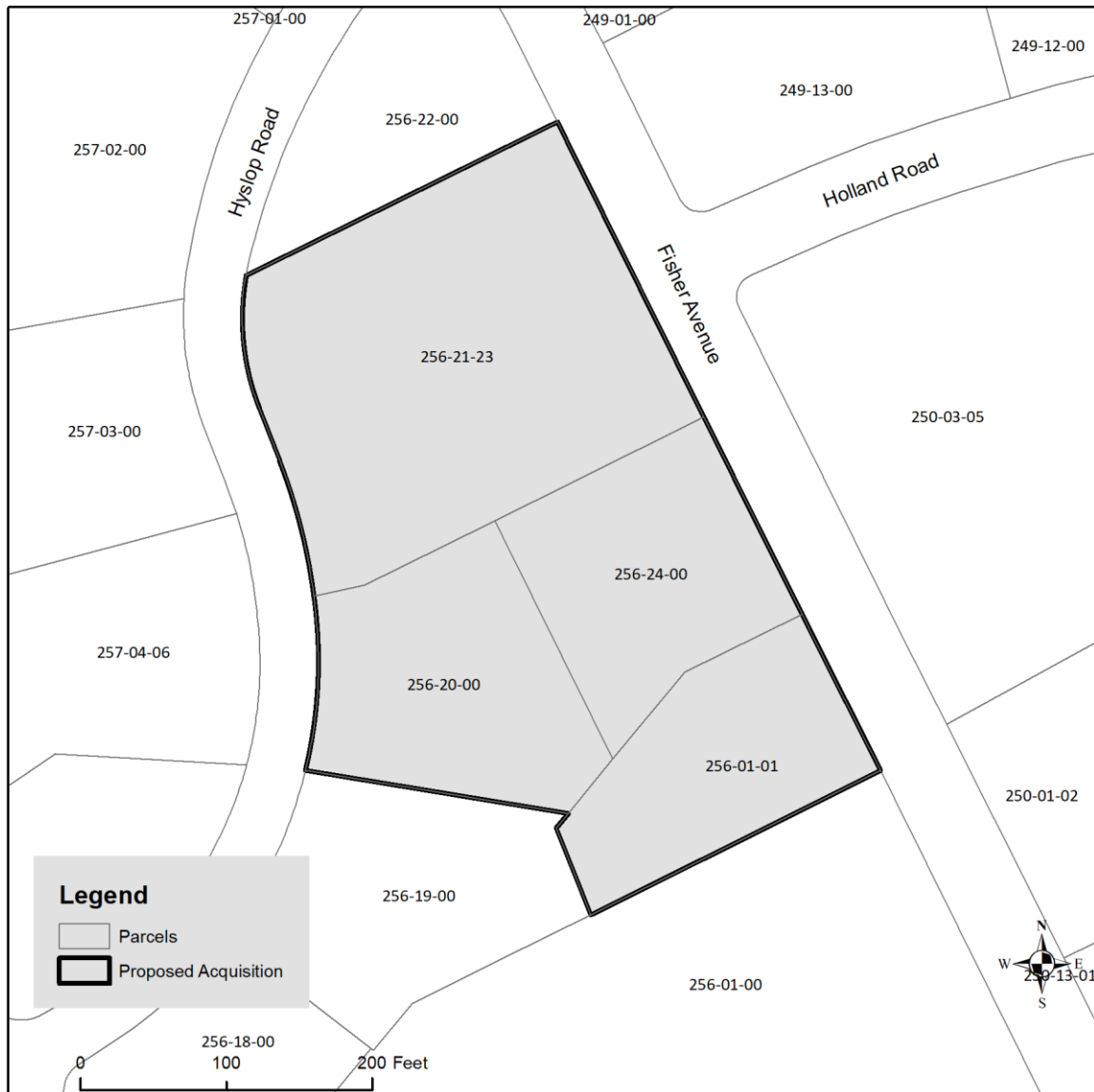


Exhibit I – West Parcel Profit Sharing Chart

Sale of West Parcel - Profit Sharing Framework					
Assume Sale Price of \$18,550,000*** (Colliers appraised value) and assume 2% cost of sale					
Assume Waterfall of Proceeds Sharing Above \$14,800,000 <i>net proceeds</i>					
Total Sale Price	Incremental Sale Proceeds	Incremental Welltower Proceeds		Incremental Town Proceeds	
		\$	%	\$	%
\$ 14,800,000	\$ 14,800,000	\$ 14,800,000	100%	\$ -	0%
\$ 15,800,000	\$ 1,000,000	\$ 371,000 *	0%	\$ 629,000	100%**
\$ 16,300,000	\$ 500,000	\$ 25,000	5%	\$ 475,000	95%
\$ 16,800,000	\$ 500,000	\$ 50,000	10%	\$ 450,000	90%
\$ 17,300,000	\$ 500,000	\$ 75,000	15%	\$ 425,000	85%
\$ 17,800,000	\$ 500,000	\$ 250,000	50%	\$ 250,000	50%
\$ 18,550,000	\$ 750,000	\$ 562,500	75%	\$ 187,500	25%
TOTAL:	\$ 18,550,000	\$ 16,133,500		\$ 2,416,500	
<p>*NOTE 1: For the purpose of calculating cost of sale for this Exhibit, we assume a total sale price of \$18.55M is achieved. This figure is used for illustrative purposes only. Costs of sale will include all out of pocket costs incurred by Welltower in connection with the sale including, without limitation, brokerage commissions, all state and local transfer taxes, and attorneys' and consultants' fees and expenses that are customarily incurred for similar commercial transactions.</p> <p>**NOTE 2: We assume the Town receives 100% of the initial \$1M in sale proceeds AFTER Welltower's cost of sale</p> <p>***NOTE 3: Should Welltower achieve a sale price above \$18.55M the Town would propose to share in 10% of additional net proceeds</p>					

Exhibit J – Town PILOT Policy**Adopted 12/18/07****Amended 6/28/2011****The Town of Brookline Payment In Lieu of Tax (PILOT) Policy**

Brookline is home to, and welcomes a diverse mix of property owners: residential, commercial, governmental and non-profit charitable and educational. The Town's vibrant and growing nonprofit sector both contributes to and benefits from the Town's overall quality of life. The Town provides a variety of critical services to all segments of the community, whether they are residents, businesses or non-profit organizations. While these services provide benefits to all, funding for town departments and services relies heavily on property tax revenues. In order to maintain the high standard of municipal services that Brookline has historically provided, the Board of Selectmen believes that all property owners should contribute a fair share toward the cost.

Overview

“Increasing the overall fiscal capacity of cities and towns turns out to be central to the future prosperity of the Commonwealth... providing communities with the resources to deliver the services and amenities is critical to the state's future development and prosperity ... (and) equally important is making sure that local municipalities have the ability to provide the economic and social environment that is attractive....” Revenue Sharing and the Future of the Massachusetts Economy by the Northeastern University Center for Urban and Regional Policy(2006)

The Town of Brookline, through its various departments, provides a variety of services to its residential and commercial taxpayers and non-profit organizations located or conducting business within the Town. While municipal service requirements vary among these diverse groups, all benefit from the overall enhanced quality of life enjoyed by the community. However, the cost of municipal services is substantial, and the Commonwealth of Massachusetts has limited the sources of revenue available to municipalities. The property tax provides approximately 75% of municipal revenue used to support services. Revenue generated from property taxes is determined by law (Proposition 2 ½), mix of land uses, and geography.

The Town is approximately 6.8 square miles in size and is fully built out; therefore any development is based almost entirely on re-use. The current makeup of the Town based on land use is approximately 55% taxable land and 45% non-taxable. The largest share of the non-taxable land is owned by the Town and used for public buildings, streets/sidewalks, open space and other public uses. Other owners include the state and federal government, a foreign government (Japan), the MBTA, private educational and religious institutions, and charitable and benevolent organizations.

A taxable parcel that becomes tax-exempt does not reduce the Town's total tax levy. Instead, it shifts the tax burden to all remaining taxable parcels. It is a primary goal of the Town to preserve its taxable land, while at the same time continuing to support its rich cultural diversity. It is also a primary goal of the Town to have the cost burden of providing services borne by and shared among all residents, taxpayers, commercial entities and non-profit institutions, to the extent possible and reasonable.

The Commonwealth of Massachusetts and its political sub-divisions, including the Town of Brookline, have historically been recognized as leaders in the area of higher education, arts and culture, public health and religious freedom, and have encouraged non-profits to organize in the state to enrich the quality of life of its residents. The General Court of the Commonwealth created a series of property tax exemptions within the General Laws (M.G.L. Chapter 59 Section 5) as an incentive to support the often vital work of non-profit organizations.

The Town's location adjacent to Boston, and its easy access to mass transportation and major roadways, makes it attractive for non-profit institutions to locate in Brookline. This demand for land and buildings to operate non-profit organizations has absorbed taxable property in Brookline at an alarming rate. The Town is concerned that a continuing shift in tax burden to a diminishing tax base will have a negative impact on residents, local businesses and the overall Brookline community. In order to maintain a fair balance between the cost of town services and payment for those services, the Town has developed a policy to address the need for a payment-in-lieu-of-tax (PILOT) program for tax exempt properties.

Policy

Brookline recognizes that non-profit organizations contribute directly to the quality of life within the community and welcomes them to the town. In order to maintain the financial health of the community so as to continue to provide a range of quality services, the Town must preserve its existing tax base and expand that revenue source where reasonably possible. It is the Town policy to distribute the burden of cost in a fair method among all users of services: citizens, taxpayers and non-profit institutions.

M.G.L. Chapter 59 section 5 enables the granting of tax exempt status to certain non-profit organizations. Once an organization is granted an exemption, the Town can not legally require that organization to pay a property tax or bind that organization to give up the rights to these legal exemptions. Therefore:

1. The Town will seek voluntary PILOT Agreements with all tax exempt institutions within the community that own real property, or that rent real property from the Town (pursuant to MGL Chapter 59 section 5, sub-section 2B);
2. These PILOT Agreements should be based upon fair market value and tax levy. PILOT Agreements should be established on the basis that the non-profit organization's payment

amount is equal to the percentage of tax levy that supports the critical services of the Town's Police, Fire and Public Works operations. The Town has determined that this share is equal to at least 25% of the full levy;

3. In the event that a non-profit organization enters into a voluntary PILOT agreement, the Town may offer to phase in the impact over a period of time. The Town expects to negotiate PILOT agreements, whereby once the payment target is reached, the payment will annually increase by an escalation factor generally equal to the average historic growth in annual tax levy;

4. For smaller, community-based non-profit organizations with controlling interests in properties assessed at less than \$ 5 million in FY 2007 dollars, consideration for community service may be granted as part of an approach to establish the basis for a PILOT Agreement. This value ceiling would be inflated by 2.5% per year in subsequent years. The Town may base such a PILOT Agreement on less than 25% of the full levy.

5. A PILOT Agreement will remain in force for the entire tenure of its contractual term as long as the use and value established in the PILOT Agreement have not changed. All property under a PILOT Agreement must still meet all the requirements for eligibility for exempt status.

6. A PILOT Agreement does not replace the requirement that each organization seeking property tax exemption must file a "Return of Property Held for Charitable Purposes" form (State Tax Form #3ABC) with the Board of Assessors on or before March first of each year;

Guidelines for PILOT Agreements

□ Recognizing the financial limitations of non-profit organizations, the Town expects to initiate PILOT discussions with non-profit organizations when they are in the process of acquiring property or considering an expansion of existing real estate holdings or planning of new construction on existing property. This approach has the pragmatic advantage of allowing exempt institutions to include the cost of any PILOT Agreement in the financial planning of the new or expanded facility. Further, the Town may waive this approach in the event that a non-profit organization suffers an extraordinary or catastrophic loss, resulting in a financial hardship.

□ In the event that a non-profit organization acquires property and plans new construction or substantial reconstruction, the eligibility for tax exemption cannot be determined until the construction is completed and eligible exempt use is determined. The exemption would then be applied to the next fiscal year.

□ In the case of a significant physical change in the property resulting in a change in the property's fair market value that occurs after a PILOT Agreement has been established, the Town will adjust the PILOT Agreement to include a phased in change of the payment on the addition, per the agreement or per an agreed upon schedule.

□ In the event that there is a change in the use of property under a PILOT Agreement, the Town may review the eligibility of the exemption, and the terms and conditions of the

PILOT Agreement and propose such changes as may be needed to reflect the change in the value of the property.

☐ In the event that the non-profit gives up ownership of the parcel, the parcel will revert back to a taxable status. In the event that a non-profit organization purchases a parcel from a non-profit organization that has agreed to a PILOT Agreement, the parcel will revert back to a taxable status, pending submission of the state tax form (#3ABC), a determination by the Board of Assessors of its tax exemption eligibility, and the completion of a PILOT Agreement with the new owner. In this instance, the Town may elect to seek a voluntary PILOT agreement with the new non-profit acquirer of property.

Exhibit K – Design Guidelines

DRAFT V4 2/25/2020

Newbury College East Parcel Design Guidelines

Proposed to Newbury Zoning Committee

It has been determined by the Newbury Zoning Committee (NZC) that additional guidance is needed to ensure that all future buildings constructed in the Newbury College East Parcel are designed in a manner that reflects the vision and guiding principles established by the Committee. Both the Planning Board and Design Advisory Team should utilize this document to inform their discussions and decisions surrounding their design review of all buildings.

The Newbury College East Parcel is a unique property within the single-family zoning district for its prominence in the Fisher Hill neighborhood. It fronts on Fisher Avenue and the parcel is within the Fisher Hill national register historic district. It serves as a central parcel to the neighborhood at the peak of Fisher Hill and a prominent counterpoint to Reservoir Park. New buildings should be designed and built in a manner that reinforces a neighborhood scale at the street and activates the street edge with street level openness and plantings. Building design should strengthen the relationship between the built environment and the Historic neighborhood. Sustainability and harmony between existing and newly planned buildings should be emphasized.

In the Guidelines that follow, the Study Committee seeks to shape the visual and functional qualities of the buildings, to influence their relationship to neighboring buildings, and to underscore their contribution to the Fisher Hill historic fabric. We chose not to be overly prescriptive, believing that the excellence which we seek for this development will result from a rigorous Design Advisory Team process.

2) Setting

The design problems the site presents are numerous, but the site design priorities of this project should include:

- Scale and setbacks relative to existing Adjacent single- and multi-family residences
- Compatibility to existing Buildings on the site
- Scale along the streets: Fisher Ave and Holland Road
- FAR for the site
- Building Height

3) Buildings- General

Height and mass are the most critical features the NZC sought to address, and the design guidelines therefore encourage the use of intermediate elements to break down the massing and volume of the buildings.

- Human-Scaled Design Elements
 - Examples: bays, setbacks, stepbacks, dormers, porticos, porches, breezeway
 - Encourage the use of thoughtful articulation and intermediate design elements such as pilasters, decorative railings, architectural trim, window surrounds, etc.
 - Architectural elements should be used to provide scale to large building facades. Layout may correspond to architectural or structural bay dimensions.
 - Variation in building massing may include changes in wall plane or height and may relate to primary building entries, window openings, important corners, or other significant architectural features.
 - Variation in building massing and detail should relate to scale of surrounding buildings.
 - Pedestrian scale streetscape components are encouraged; this may include benches and site lighting.
- Materials
 - Consistent with and relatable to local neighborhood buildings.
 - Building materials should be selected with the objectives of quality and durability appropriate within its context, and sympathetic with materials used on local neighborhood buildings.
 - Scale and texture of architectural detailing is important to relate to the existing historic fabric.
 - To encourage human-scale buildings and to ensure the consistent use of high quality materials appropriate to this environment, buildings on this site may incorporate the following materials and detailing as appropriate:
 - Masonry such as stone, cast stone, brick or architectural precast concrete
 - Cladding and architectural trim may include wood to the extent feasible or aesthetic equivalent.
 - Architectural metals including metal sheets with expressed seams. Limited use of standing metal seam roofing may be used where photovoltaics are required.
 - Roofing materials may include slate or shingles to the extent feasible or aesthetic equivalent. Roof material should have some surface relief.
 - Carefully detailed selection of materials should reinforce architectural scaling and appropriate proportions.

- Roofs
 - Articulated roof forms are encouraged through changes in height and shape (hip and gambrel profiles) and the use of dormers, decks, eyebrows, chimneys and gutters.
 - Limited use of flat roofs.
 - All Rooftop equipment should be screened from the street in a way that integrates the building architecture in form and material. Screen all rooftop equipment for decreased visibility from the street.
 - The roof should complement the scale of the building and enhance the design qualities of base middle and top.
 - Roof decks to have detailing consistent with residential scale and style and high quality materiality.
 - Fenestration
 - Residential scale, larger openings on more public ground floor spaces, smaller windows at upper floors.
 - Vary scale of fenestration between living areas, bedrooms, etc.
 - Transparent glazing (non-tinted, non-colored) is encouraged as appropriate and to the extent feasible.
 - Location and patterns of glazing should enhance building function and scale.
 - Recessed glazing, glass framing, and mullion patterns should be used to provide depth and substance to building façade and should consider play of sunlight across façade where appropriate.
 - Glazing systems should utilize framing and mullion systems that provide scale and surface relief.
 - Building Entries
 - Use of porches, large openings, and canopies.
 - Primary building entries should be emphasized through changes in wall plane or building massing, a greater level of detail, quality of materials, and more articulated lighting.
- 4) Sustainable Design Elements
- a. Goal of LEED Gold Certifiable; includes but is not limited to elements listed below.
 - b. Include elements of Passive House and WELL strategies
 - c. Will comply with the intent of the Town's No Fossil Fuels Bylaw with the exception of the indoor pool.
 - d. Implement Sustainable Site Measures which will include the following.
See also Section 8: Landscaping.
 - (i) Stormwater control measures will optimize on-site filtration using rain gardens and bioswales.

- (ii) Bicycle parking will be provided on site to accommodate residents, staff, and visitors. Shower and dressing room access will be provided.
 - (iii) Consider use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. overlook, and other site features.
 - (iv) Install native and drought tolerant plants. Incorporate bird friendly and pollinator plants.
 - (v) Visual and physical access to vegetation.
 - (vi) Spaces designed to support social connection.
 - (vii) Full cut-off exterior light fixtures with LED lighting. Use of pole mounted fixtures limited to surface parking areas. Site lighting is encouraged to be installed at low elevation to adequately light the path of travel per code. All exterior lights will meet the required Backlight-Uplight-Glare rating. There will be no uplighting of landscaping or buildings.
 - (viii) Electric vehicles for on-site fleet of passenger vehicles. Electric vehicle charging stations will be provided in excess of Town requirements.
- e. Optimize Energy Efficiency of Building Systems
 - (i) Reduce energy demand - implement Passive House strategies to reduce energy use. Strategies include increased insulation at walls and roofs, tight building envelope, and high-performance windows.
 - (ii) Harvest Site Energy: Optimize the building for solar renewable energy measures, consider including photovoltaic and solar thermal.
 - (iii) Provide water-efficient plumbing fixtures
 - (iv) Perform Building Commissioning for MEP systems and building envelope
 - (v) Provide training for Operations and Maintenance
- f. Indoor Environmental Quality
 - (i) Optimize daylighting and views
 - (ii) Specify healthy building materials
 - (iii) Promote occupants' comfort and well-being by providing interior cross-contamination prevention measures and CO2 monitoring.
- g. Implement WELL strategies to provide users with a healthy building:
 - (i) Aesthetic Circulation Network
 - (ii) Drinking Water Access
 - (iii) Restorative Room

(iv) Control Glare

5) New Buildings

The new building (s) may incorporate the following measures to minimize its scale, establish compatible massing relationships with adjacent structures, and engage the streetscape:

- Generous first floor height
- Public and common space on first floor
- Diminishing verticality
- Reduce footprint of building at top floor to create a diminished sense of scale – intermittent roofdecks at top floor is encouraged.
- Building massing that is perpendicular to streets should be scaled down by reducing the building width at setbacks and creating smaller elements at the ends of massing, as demonstrated by the massing that was presented to the zoning committee on January 8th, 2020.

6) Historic Buildings

- Proposed changes to historic buildings are to be reviewed with the Town's Preservation Staff and Commission.
- Propose a joint committee (architectural sub committee & preservation commission) for streamlining this process.
- Where existing historic buildings on site are to be retained, their renovation will be consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties. This applies to exterior elements of the buildings.
- Any new intervention for accessibility, connections to new buildings, etc. will be done in a historically sensitive manner to ensure consistency with existing historic elements.

7) Public Space and Streetscape

- Holland Road and Fisher Ave Public Space and Streetscape
 - o Preservation of existing Street Trees
 - o Protection of existing trees on site per Arborist Report
 - o Review of streetscape to determine whether there are opportune areas for public benches along the perimeter of the site. If provided, bench location and design to be integrated into the landscape design.

8) Vehicular Circulation, Access, and Parking

- Surface parking will be limited to the south end of the site. 20' setback will be maintained from property line to edge of surface parking areas for all adjacent properties to the south. 5' min. buffer to adjacent property line and fence will be provided at any vehicle turn-around areas.
- Eliminate Holland Road driveway and create an overlook
- Service and delivery activities should be separated whenever possible from the primary public access and screened from public view by means such as locating underground or locating internal to structures.

- Parking structures should utilize materials and architectural detailing found in the primary development being served.

9) Landscape

- Provide either fencing, berming, or landscape screening to buffer the south parking area from the adjacent Olmsted Hill development.
- Landscaped areas adjacent to the public streets will be designed to maintain soil and prevent runoff.
- Rain Gardens: Where feasible, rain gardens will be installed to collect drainage at the perimeter and interior of the project. Bioswales and other stormwater systems will be designed and maintained in a clean manner to enhance the view from the street.
- Predominant use of native and drought tolerant plantings will be used where possible.
- Site lighting design is to be integrated into the wayfinding and building identification.
- Irrigation design and maintenance consistent with LEED standards.
- Improve permeability of roadway with pavers and other pervious materials to the extent feasible.

10) Signage

- Signage design will conform to guidelines described in “A Guide to Sign and Façade Design”.

SELECT BOARD’S RECOMMENDATION

ADVISORY COMMITTEE’S RECOMMENDATION

XXX